

**Redline of all Proposed Changes to 2019 Zoning Bylaws which  
require a 2/3 majority vote at Town Meeting for Adoption.**

**ZONING ~~BY-LAW~~BY-**

**LAW TOWN OF**

**ROCKPORT**

**THE COMMONWEALTH OF MASSACHUSETTS**

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## **ZONING BY- LAW**BY-LAW

### **I. GENERAL PURPOSE AND BASIC REQUIREMENTS**

#### **A. PURPOSE**

The purpose of this By-law is to promote health, safety, convenience, and welfare of the inhabitants of the Town of Rockport; to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to encourage housing for persons at all income levels; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to protect and preserve open space as a natural resource, for the conservation of natural conditions for flora and fauna and to serve as amenity for scenic and aesthetic enjoyment and recreational use; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the Town; to achieve optimum environmental quality through review and cooperation by the use of incentives, bonuses and design review; and to preserve and increase its amenities and to encourage an orderly expansion of the tax base by utilization, development, and redevelopment of land. It is made with reasonable consideration to the character of the district and to its peculiar suitability for particular uses, with a view to giving direction or effect to land development policies and proposals, including the making of Rockport a more viable and more pleasing place to live, work, and play. ~~In order to preserve and promote the health, safety, morals, convenience and welfare of the townspeople; to lessen the danger from fire, to improve and beautify the Town and to stabilize the value of the real estate, the following regulations for the use of premises and the construction, location and use of buildings and structures are hereby established under the General Laws relating thereto.~~

#### **B. BASIC REQUIREMENTS**

No parcel of land in any district shall be used for any purpose other than those authorized for the district in which it is located. The uses shall be subject to the other restrictions required by this ~~by-law~~By-law except for municipal purposes when and as authorized by a vote of the Town. The use of land in any district by the Rockport Housing Authority for housing of elderly persons of low income and for municipal uses by the Town of Rockport shall be exempt from all of the provisions of this zoning ~~by-law~~By-law when and as authorized by a two- thirds vote of the Town. The use, construction, alterations, height and area of buildings and the use of premises in the aforementioned districts shall be regulated and restricted as hereinafter provided. No lot, and no building and structure, shall be changed in size or use so as to violate the provisions of this ~~by-law~~By-law.

All Town-owned property used for municipal purposes is exempt from the provisions of this ~~by-law~~By-law.

## II. DEFINITIONS

### C.A. DEFINITIONS

In construing this ~~by-law~~By-law the following words shall have these meanings herein given, unless a contrary intention clearly appears:

**ACCESS:** The ability of vehicular traffic to enter upon and exit any lot through the "Front Lot- Line(s)" as defined in this ~~By-law~~By-law. For the purposes of this ~~b~~By-Law, access is provided only through front lot lines and no other boundary. ~~(Added ATM 04-03-10.)~~

**ACCESSORY DWELLING UNIT:** ~~Any other dwelling existing on a given lot in excess of one dwelling.~~A second dwelling unit subordinate in size to the principal dwelling unit on a lot, located in either the principal dwelling or an accessory structure. The apartment is constructed so as to maintain the appearance and essential character of a one-family dwelling and any accessory structures.

**ACCESSORY STRUCTURE:** A detached subordinate structure(s), the use of which is incidental to that of the principal structure and located on the same lot or parcel.

**ACCESSORY USE:** A use incidental to and customarily associated with a specific principal use, located on the same lot or parcel. ~~A use of land or a building customarily incidental to the use of land or building to which it is accessory, excluding, however, buildings for human habitation.~~

**AMUSEMENTS:** Commercially operated entertainment of the type commonly associated with carnivals, amusement parks and/or beach arcades.

**APARTMENT HOUSE:** ~~See Mixed Use or Multiple Dwelling. (Amended FTM 9-12-11)~~

**ANTENNA:** all panels, dishes or other types of equipment used to propagate radio frequency signals, or similar devices.

**APPLICANT:** a natural person, a corporation, a limited liability company, a partnership, or any other entity capable of holding title to real property.

**AQUIFER:** A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

**ART GALLERY/STUDIO:** Work space in a building for the creation and display of works of art by one or more artists or artisans, including the accessory exhibition, display, or sale of art produced on the premises. ~~A residence also used as a studio for the creation, display and sale of works of art and instruction by the resident artist.~~

**AUTOMOBILE GRAVEYARD:** An establishment that is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or motor vehicle parts as defined in MGL c.140B, s.1.

**AUTOMOBILE SERVICE STATION:** Any building, structure or land used primarily for the dispersal, sale, or offering for sale of automotive fuels, oils or accessories, including minor services such as lubrication of automobiles and replacement or installation of minor parts and accessories.

**AUTOMOBILE REPAIR SERVICES:** General repair, rebuilding, or reconditioning of engines and motors; body work; frame work; welding; and major painting service for motor vehicles and trailers.

**BOATYARDS:** Land and buildings used for the hauling, storage and launching, repair and maintenance of vessels and related mechanical equipment and other floating structures employed for marine commerce, pleasure, boating, docking or storage.

**BUILDING:** A single structure enclosed within exterior walls, built, erected and framed of a combination of any materials, whether portable or fixed, and having a roof, to form a structure for the shelter of persons, animals or property. ~~(Added ATM 04-03-10.)~~

**BUILDING COVERAGE:** The portion of a lot that is covered by any buildings, including accessory buildings and any attachments thereto such as porches and decks, except for uncovered decks where rainwater can drip through and fall to a pervious surface below. ~~(Amended STM 9/8/03)~~

~~**BULKHEADS:** An access to a basement level consisting primarily of a sloping door system covering a basement access stair. A bulkhead placed within the setback shall not exceed 42 inches above finished grade at its highest point.~~

**CMR:** Code of Massachusetts Regulations.

**COMMERCIAL FERTILIZER:** Any substance containing one or more recognized plant nutrients which is used for its plant nutrient content, and which is designed for use, or claimed to have value in promoting plant growth, except un-manipulated animal and vegetable manures, marl, lime, limestone, wood ashes, and gypsum, and other products exempted by state regulations.

**-CONVENIENCE STORE:** A small retail establishment, including those that may be located within or associated with another use, that offers for sale goods such as prepackaged food items, other household goods, and limited beer and wine items.

**CONVENTIONAL SUBDIVISION:** A division of land into two or more lots in such a manner as to constitute "subdivision" as defined in MGL c.41, s.81L, as amended from time to time, and in which minimum lot size is that required for a single-family home in the zoning district.

~~**COTTAGE COLONY:** A group of small summer vacation homes.~~

**DECK:** An unroofed platform, typically with plank flooring, enclosed by siding that meets the current building codes and that consists of either the building, railings with

spaced balusters, cable, or transparent siding. ~~No deck shall be constructed above the elevation of the highest habitable story of the structure. (Added FTM 9/12/11)~~

**DISCHARGE:** The accidental or intentional disposal, deposit, injection, dumping, spilling, leaking, pouring, or placing of toxic or hazardous material or hazardous waste upon or into any land or water such that it may enter the surface or ground waters.

**DORMER:** A roofed structure projecting through a sloping roof. ~~See Gable Dormer and Shed Dormer in Section IV.A., new section 3. and 4. (Amended FTM 9-12-11)~~

**DRY WELL:** A subsurface pit with open-jointed lining or holes through which storm-water drainage from roofs, basement floors, foundations or other areas seep into the surrounding soil.

**DWELLING:** Any building used in whole or in part for human habitation.

**DWELLING UNIT:** One or more rooms arranged for the use of one or more individuals living together as a single housekeeping unit with cooking, living, sanitary and sleeping facilities.

~~**EXISTING DWELLING:** A dwelling existing at the effective date of the revision of the by-law in 1976.~~

**FAMILY/HOUSEHOLD:** One or more persons, ~~including domestic employees,~~ occupying a dwelling unit and living as a single, ~~non-profit~~ housekeeping unit; ~~provided, that a group of five or more persons who are not within the second degree of kinship to each other, as defined by law, shall not be deemed to constitute a family.~~

**FARM:** A tract of land devoted to agricultural purposes.

**FENCE:** any structure constructed of rails, timber, boards, metal, masonry, stone, earthworks such as berms, or other man-made objects or materials, which prevents intrusion, marks a boundary, provides visual screening or provides security from noise, wind or dust. ~~(Added ATM 04-03-10.)~~

~~**LIGHTING FIXTURE:** An assembly, which houses a lamp or lamps and any other parts such as a reflector or lens, mounting bracket, etc.~~

~~**FLOODLIGHT OR SPOTLIGHT:** Any luminaire that concentrates the light output into a directed beam in a particular direction.~~

~~**FOOT CANDLE:** A unit of light intensity measured at a distance from the source.~~

~~**FRAME SHOPS:** Shops for the sale of supplies used by artists in their art work.~~

**FRONT-LOT LINES:** For the purpose of calculating “front lot set-backs” the term “front lot line” shall mean that lot line which provides the minimum required lot frontage of the zoning district where the lot is located and access for the lot.

**~~GAINFUL-HOME OCCUPATION:~~** An occupation which is incidental to residence, carried on only by a person residing on the premises and no more than one additional person, and which does not cause noise, undue commotion or traffic, offensive odors, unsightly conditions or other undesirable effects and which is in no way detrimental to a residential neighborhood.

**~~GALLERY:~~** ~~A room or building used as a studio and also devoted to the exhibition, for sale, display of works of art.~~

**~~GARDEN/UTILITY SHED:~~** ~~An unheated accessory building designed for storage and not exceeding 10 feet by 12 feet nominal dimensions with height of building not more than 11 feet, and the lowest point of the shed shall not be elevated more than 6 inches above the highest point of the natural grade within its footprint. (Added ATM 04-03-10.)~~

**~~GUEST HOUSE:~~** ~~The leasing of rooms by the person or persons residing on the premises.~~

**GREEN INFRASTRUCTURE:** shall mean the vegetation and forests that provide services to the community such as groundwater filtering and retention, aquifer recharge, carbon sequestration and temperature control.

**GROSS FLOOR AREA:** The square footage of the floor area within the perimeter of the exterior walls of a Building or a combination of Buildings. A Gross Floor Area calculation makes no deduction for interior architectural features such as stairs, hallways or closets. Subsurface basements are excluded and attic space with a ceiling height of no more than 7 feet at its highest point is included ~~are excluded~~ from a Gross Floor Area calculation. Notwithstanding the preceding sentence, a calculation of Gross Floor Area solely for determining whether Site Plan Review is required for a residential structure shall include the gross floor area of a basement and attic.

**HAZARDOUS MATERIAL:** Any substance in any form which because of its quantity, concentration, or its chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with one or more substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. Hazardous material includes, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious materials, and all substances defined as toxic or hazardous under MGL c.-21E. This term shall not include hazardous waste or oil.

**HAZARDOUS WASTE:** A substance or combination of substances, which because of quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety, or welfare or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed. This term shall include all substances identified as hazardous pursuant to the Hazardous Waste Regulations, 310 CMR 30.000.

**HISTORICAL HIGH GROUNDWATER TABLE ELEVATION:** A groundwater

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elevation determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey.

**HEIGHT OF BUILDING:** The vertical distance, measured from the average elevation of the lot grade prior to any site preparation or other construction activity, surrounding the entire building, to the ridge or highest point of the roof of the building. ~~The methodology for determining the elevation of the lot grade prior to site preparation shall be published by the Building Inspector in consultation with the Planning Board. For each determination, the Building Inspector shall state the reason or reasons for choosing the methodology.~~ (Amended ATM March 29, 1999 and FTM Sept. 9, 2013).

**HOMEOWNERS ASSOCIATION:** A corporation, trust, or association owned by the unit owners within an Open Space Subdivision and used by them to manage and regulate their affairs, including any commonly owned land or facilities.

**HOTEL:** A building occupied as a temporary lodging place for individuals in which the rooms are usually occupied singularly for hire and in which rooms no provisions for cooking are made, and where there can be a kitchen and public dining room for the accommodation of the guests and the general public.

~~**HOUSE TRAILER:** A trailer or mobile home, so-called, whether on wheels or otherwise, including without limitation, a home trailer, an automobile trailer, a mobile home.~~

~~**IMPERMEABLE SURFACE** "Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil beneath." (Added ATM 04-03-10.)~~

**IMPERVIOUS SURFACE:** Material or structure on, above, or below the ground that does not allow precipitation or surface water runoff to penetrate into the soil.

**INN:** A building erected in which there are guest rooms used for the purpose of offering public lodging on a day-to-day basis, including a bed and breakfast home.~~for or used for paying guests, permanent or transient, where over six (6) bedrooms are used for such purpose.~~

**JUNKYARD:** An establishment that is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, as defined in MGL c.140B, s.1.

**KENNEL:** The keeping, boarding or maintaining of more than three dogs. The term “dogs” does not include a litter of puppies under six months of age.

~~**LAMP:** The component of a luminaire which produces light.~~

**LANDFILL:** A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to the Solid Waste Regulations, 310 CMR 19.006.

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~~**LIGHTING FIXTURE:** An assembly which houses a lamp or lamps and any other parts such as a reflector or lens, mounting bracket, etc.~~

**LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION (LSGMSPVI):** A solar photovoltaic system that is structurally mounted on the ground, not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

**LOW IMPACT DEVELOPMENT:** Land development and building practices that minimize environmental impacts by preserving or adding vegetation including trees, and promoting groundwater retention and recharge through design features.

**LOW IMPACT DRAINAGE SYSTEM:** A stormwater management system that maximizes maintenance of clean groundwater resources through natural filtering, retention and recharge.

**LOT:** An area of land under one ownership, with definite boundaries, uses or available for use as the site of one or more buildings.

**LOT, BUILDABLE:** A lot which meets all the minimum requirements set forth in this ~~bylaw~~ By-law necessary for the authorized construction of at least one main building/structure.

~~**LUMEN:** A unit of light output.~~

~~**LUMINAIRE:** A complete light system including a lamp or lamps and a fixture.~~

**MARIJUANA ESTABLISHMENT (NON-MEDICAL):** A marijuana establishment, as defined in MGL c. 94G, s. 1, but not including a medical marijuana treatment center.

~~Mass~~ **MASSDEP:** Massachusetts Department of Environmental Protection. MGL: Massachusetts General Law.

**MEDICAL MARIJUANA TREATMENT CENTER:** A medical marijuana treatment center or registered marijuana dispensary (RMD) as defined in Chapter 369 of the Acts of 2012.

**MEDICAL OFFICES:** A building designed and used as an office for the diagnosis and treatment of human patients that does not include overnight care facilities or licensing as a clinic.

**MIXED USE:** A building which contains residential dwellings located above the ground floor of an institutional, civic, office, commercial, or retail use. ~~One or more dwelling units within a single structure, behind or above a first floor street front unit that is used for any Retail Business and Consumer Service Use allowed in the D zoning District. (Added FTM-9-12-11)~~

**MOBILE HOME:** A structure, transportable in one or more sections, which is built on a

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permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required facilities.

**MOTEL-OR-TOURIST-COURT:** A building providing travelers with lodgings typically united under one roof but having individual entrances, and with on-site, off-street parking spaces.

**MULTI-FAMILY~~PLE~~ DWELLING:** A structure consisting of three or more dwelling units.

**NON-CONFORMING USE:** A lawfully existing use of land or a building-structure which does not conform to the regulations for the district in which such land or ~~building-structure~~ is situated.

**NON-SANITARY WASTEWATER:** Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage including, but not limited to, activities specified in 310 CMR 15.004(6).

~~**NORMAL HOUSEHOLD USE:** any or all of the following exclusive of fuel or fluids in registered motor vehicles garaged on site:~~

- ~~a. 600 gallons or less of oil on site at any time to be used for heating of a structure or to supply an emergency generator, or~~
- ~~b. A total of 25 gallons (or the dry weight equivalent) or less of other hazardous or toxic materials on site at any time, including oil not used for heating or to supply an emergency generator (Added ATM 04-03-10.)~~

~~**OCCUPATION:** Work a person does regularly or to earn a living; business; employment; trade.~~

**ON-SITE SOLAR PHOTOVOLTAIC INSTALLATION:** A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

**OPEN DUMP:** A facility operated or maintained in violation of the Resource Conservation and Recovery Act 42 U.S.C. 4004(a)(b), or state regulations and criteria for solid waste disposal.

**OPEN SPACE SUBDIVISION:** A division of land into two or more residential lots in such a manner as to constitute "subdivision" as defined in MGL c.41, s.81L, as amended from time to time, and that meets the provisions of Section XI.

**PARKING LOT:** An outdoor lot for the parking of motor vehicles which is operated as an independent enterprise and which is not associated with and contiguous to a single specific enterprise for which parking space is necessary to the conduct of business.

**PETROLEUM PRODUCT:** Includes, but not limited to, fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil

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mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. Petroleum product shall not include liquefied petroleum gas including, but not limited to, liquefied natural gas, propane or butane.

**PROJECT:** the construction of structures or buildings, the alteration or enlargement of existing structures or buildings, or the alteration of the ground for which an Applicant seeks approval of the Site Plan Application.

**PROTECTED OPEN SPACE:** mean land that is permanently preserved in a natural, scenic or open condition or in agricultural, farming or forest use, by conservation restriction or other legal means.

~~**POTENTIAL DRINKING WATER SOURCES:** Areas or aquifers which could provide significant drinking water in the future. (Added ATM 04-03-10.)~~

**RATED NAMEPLATE CAPACITY:** The maximum rated output of Direct Current (DC) electric power production of the photovoltaic system.

**RECHARGE AREAS:** Land areas, such as a Zone II or Interim Wellhead Protection Area, where precipitation and surface water infiltrates into the ground to replenish groundwater and aquifers used for public drinking water supplies.

**RESTAURANT:** Any establishment at which food and beverages are sold for consumption on the premises to patrons seated within an enclosed building, or elsewhere on the premises.

**RESTAURANT, CARRY-OUT:** Restaurants with little or no seating where most customers order and are served their food at a counter or in a motor vehicle in packages prepared to leave the premises.

~~**SEASONAL:** Use between a certain month in the spring and a certain month in the fall. A change in seasonality shall be a change of use for purpose of subsections I.D.1. and I.D.3., and seasonality may be imposed as a condition pursuant to the third paragraph of subsection IX.C.4.~~

**SEPTAGE:** The liquid, solid, and semi-solid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. This term shall not include any material that is a hazardous waste, as defined by 310 CMR 30.000.

~~**SETBACKS:** The terms “front yard setback”, “rear yard setback” and “side yard setbacks” defined herein, shall also be known as “setbacks” or “setback”.~~ A setback is an open unoccupied space on the same lot as the main building measured from the lot line to the building. All setbacks are measured from the lot line to the building except the front yard setback.

- a. Front Yard Setback - An open unoccupied space on the same lot with a main building extending the full width of the lot, and situated between the front lot and the front line of the building

projected to the side line of the lot.

b. ~~Side and Rear Yard Setbacks~~ - The minimum distance from the side lot lines to the nearest point of the allowable principal building or accessory building measured perpendicular to the side lot lines.~~any setback other than a front yard setback.~~

~~b.c.~~ Rear Setback - The minimum distance from the rear lot line to the nearest point of the allowable principal building measured perpendicular to the rear lot line.

**SINGLE-FAMILY DWELLING:** A ~~dwelling structure~~ designed and used for one family or household.

**SHORT-TERM RENTAL:** Use of a dwelling unit for residential occupancy for a period of less than thirty (30) consecutive calendar days for a fee.

**SITE PLAN APPLICATION:** a plan that consists of the maps, drawings, and all other written materials submitted by the Applicant in furtherance of obtaining Site Plan approval.

**SLUDGE:** The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment including wastewater residuals. This term shall not include grit, screening, or grease and oil which are removed at the headworks of a facility

**STORY:** a. A space in a building between the surface of any floor and the surface of the next floor above, or if there is no floor above, then the space between such floor and the ceiling or roof above. ~~A set of rooms on one floor level of a building.~~ b. **HALF STORY:** ~~—a set of rooms occurring~~ A space in a building directly under a dormer or directly under a roof. ~~with a pitch of no less than 4:12, whose habitable square foot floor area shall not exceed 66% of the square foot floor area of the story directly below it, or 66% of the floor area of the wing of the building directly below it, whichever is smaller. Habitable square foot floor area under a roof is defined in the State Building Code. (Amended FTM 9-12-11)~~

**STRUCTURE:** A combination of materials assembled at a fixed location, for ~~example~~ a building, mobile home, tent, shed, swimming pool, deck or storage bin. The term structure shall include walls and fences or a combination thereof if over seven feet high measured from the existing grade. ~~The word "structure" shall apply where the context allows as though followed by the words Added ATM 04-03-10, amended ATM 4/9/2012 and FTM 9-17-18)~~

**TIDAL BOUNDARIES:** The line of mean high water as established by the ~~U.S. Coast and National~~ Geodetic Survey.

**TOWN HOUSE:** A multiple dwelling in which each dwelling unit has separate entrances and exits and share no halls or interior spaces with other dwelling units.

**TOWER:** any mounting structure, including existing water supply tanks or standpipes and fixed derricks, that is used to support reception and/or transmission equipment.

**TREATMENT WORKS:** Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

**TWO FAMILY DWELLINGS:** A ~~dwelling-structure~~ designed for and used by two families or households, ~~with not more than two dwelling units~~.

**UPLANDS:** land area that is are not under federal, state or local wetland or floodplain jurisdiction.

**USE:** The purpose for which land or a ~~building-structure~~ is arranged, designed, or intended, or for which either land or a ~~building-structure~~ is or may be occupied or maintained.

**UTILITY WORKS:** Regulated activities providing for public services, including roads, water, sewer, electricity, gas, telephone, transportation and their associated maintenance activities. This term shall include the installation of detention and retention basins for the purpose of controlling stormwater.

**VERY SMALL QUANTITY GENERATOR:** Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

~~**VERY SMALL QUANTITY GENERATOR:** Any public or private entity, other than a residence, that produces less than 27 gallons by volume or an equivalent 220 pounds by weight a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136. (Added ATM 04-03-10.)~~

~~**WATER SUPPLY PROTECTION OVERLAY DISTRICT:** The zoning district defined to overlay other zoning districts in the Town of Rockport. The Water Supply Protection Overlay District may include specifically designated recharge areas.~~

**WASTE OIL RETENTION FACILITY:** A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with MGL c.21., s.52A.

**WAY OR STREET:** A Way or Street used or available for use for vehicular traffic and meeting one of the following definitions:

- a. A public way duly laid out by the town, by Essex County or by the Commonwealth of Massachusetts;
- b. A way or street shown on a definitive subdivision plan approved and endorsed



by the Planning Board in accordance with Sub-Division Control Law and constructed in accordance with that plan and the rules and regulations of the Planning Board.

- c. A way or street in existence on July 14, 1951, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to adequately provide for the needs of vehicular traffic in relation to the proposed use of the lots abutting thereon or serviced thereby.
- d. A public or private way shall not be deemed a way or a street relative to any lot that does not have rights of access to and passage over said way or to any lot that cannot use that way as an access.

**WING:** A portion of a building that has a ridge line separate from any other portion of the building. ~~(added FTM 9-12-11)~~

**WIRELESS COMMUNICATIONS FACILITY:** all materials, equipment, devices, storage buildings, towers, dishes and antennas, used by a commercial telecommunications carrier to provide cellular radiotelephone services and/or data services and/or personal communication services (PCS). This definition does not include facilities used by a federally licensed amateur radio operator.

**YIELD PLAN:** a calculation of the number of Dwelling Units allowed in a specific Open Space Subdivision, as described in Section XI.

~~**ZONE I (GROUND WATER):** The protective radius required around a public water supply well or wellfield within the Water Supply Protection Overlay District. For public water system wells with approved yields of 100,000 gpd or greater, the protective radius is 400 feet. Mill Brook wellfield, a tubular wellfield, requires a 250foot protective radius. (Added ATM 04-03-10.)~~

~~**ZONE II (GROUND WATER):** That area of an aquifer within the Water Supply Protection Overlay District that contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield, with no recharge from precipitation). It is bounded by the groundwater divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend upgradient to its point of intersection with prevailing hydrogeologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary). The Zone II must include the entire Zone I area. (Added ATM 04-03-10.)~~

~~**ZONE III (GROUND WATER):** That land area within the Water Supply Protection Overlay District beyond the area of Zone II from which surface water and groundwater drain into Zone II. The surface drainage area as determined by topography is commonly coincident with the groundwater drainage area and will be used to delineate Zone III. In some locations, where surface and groundwater drainage is not coincident, Zone III shall consist of both the surface drainage and the groundwater drainage areas. (Added ATM 04-03-10.)~~

**ZONE A-R (SURFACE WATER):** As part of the Rockport water supply system within the Water Supply Protection Overlay District, (a) the land area between a surface water source and the upper boundary of the bank; (b) the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source as defined in 314 CMR 4.05(3)(a), or any other surface water source within the Watershed Protection Overlay District; and (c) the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body of a surface water supply; provided that the upper boundary of the banks of reservoirs and tributaries thereto are defined as the landward edges of any associated Bordering Vegetated Wetlands ("BVW") or, where BVW is not present, as the top of bank of reservoirs and tributaries thereto. Delineation of BVW and of "top of bank" shall be in accordance with current guidance published by the Massachusetts Department of Environmental Protection or its successor agency. (Added ATM 04-03-10.)

**ZONE B-R (SURFACE WATER):** As part of the Rockport water supply system within the Water Supply Protection Overlay District, the land area within 1/2 mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3)(a), or edge of watershed, whichever is less; provided, that the upper boundary of the banks of reservoirs are defined as the landward edges of any associated Bordering Vegetated Wetlands ("BVW") or, where BVW is not present, as the upper boundary of the bank of reservoirs, exclusive of the area included in the defined Zone A-R. However, Zone B shall always include the land area within a 400 foot lateral distance from the upper boundary of the bank of the Class A surface water source (Added ATM 04-03-10.)

**ZONE C (SURFACE WATER):** As part of the Rockport water supply system, Zone C means the land area not designated as Zone A-R or B-R within the watershed of a Class A surface water source as defined at 314 CMR 4.05(3)(a). (Added ATM 04-03-10.)

**ZONE C-G (SURFACE WATER):** Within the Gloucester water supply system located in Rockport, Zone C means the land area not designated as Zone A-G or B-G within the watershed of a Class A surface water source as defined at 314 CMR 4.05(3)(a). (Added ATM 04-03-10.)

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## **H.III. NON-CONFORMING BUILDINGS AND USES ~~(Amended ATM-04-03-10)~~**

### **A. CONTINUATION**

÷Any nonconforming building, structure or use may be continued provided it was in existence at the passage of the ~~Bylaw~~By-law (July 14, 1951) or any subsequent amendments applicable to its zoning district except as hereinafter excepted.

### **A.B. EXTENSION AND ENLARGEMENT÷**

#### **1.—Permit Not Required.**

**2.—**

- 3.1.** A nonconforming building on a separate lot used exclusively for human habitation as a single or two-family dwelling, may be enlarged, changed or altered without a ~~special permit~~Special Permit provided:
- The enlargement, change or alteration does not increase the nonconformity of said building including the percentage of building coverage;
  - there is no change in use; and
  - on the adjacent lot there is no dwelling within ten (10) feet of the nonconforming section or sections of the building that is being altered.

#### **4.—Permit ~~Not~~ Required.**

**5.—**

- 6.2.** The Board of Appeals may grant ~~special permit~~Special Permits to extend the time and authorize the enlargement, change or alteration of a nonconforming use or a nonconforming building provided that:
- Such extension, enlargement, change or alteration shall not be substantially more detrimental to the neighborhood than the existing use;
  - Any proposed addition within a required setback shall be no closer to the lot line than the existing nonconforming structure. This provision does not apply to one and two-family structures, but does apply to non-residential structures and residential buildings of more than two units. ~~(Amended- ATM-4-6-13)~~

### **B.C. CONDEMNATION and VOLUNTARY RAZING OF BUILDINGS÷**

In the event a nonconforming building or structure is a) condemned by the Town Building Inspector by reason of aged condition, structural or fire damage, or other defects, or b) is voluntarily razed by the property owner, other than as provided in Section I.D.2III.B, it may be replaced in exactly its existing external configuration and placement on the lot subject to the documentation requirements below÷

- Condemnation** by the Building Inspector applies to all structures.
- Voluntary Razing** applies only to one and two-family structures and does not require ~~C~~condemnation procedures by the Building Inspector as defined

above.

Documentation: A permit application to exactly replace a voluntarily razed or a condemned structure submitted to or initiated by Building Inspector for replacement reconstruction without a ~~special permit~~ Special Permit must be accompanied by a stamped plot plan, scaled elevations or scaled photographs of at least four sides of the original building made before any razing or reconstruction has occurred.

Deviations from the original architecture, size in any dimension, or change in use may be authorized by a Special Permit granted by the Board of Appeals, provided that any such changes are not in conflict with other provisions of this ~~by-law~~ By-law. Any proposed addition to a non-residential structure, or to a residential building of more than two units, within a required setback shall be no closer to the lot line than the existing nonconforming structure. ~~(Amended ATM 4-6-13)~~

Time limitations for reconstruction or resumption of use are subject to the conditions defined in section (D4) **RESTORATION**, below.

#### ~~C.D.~~ **RESTORATION:**

In the event that a nonconforming building, as defined in C3. **CONDEMNATION and VOLUNTARY RAZING OF BUILDINGS**, above, is destroyed or damaged, it may be reconstructed and used as before said destruction or damage provided:

1. Reconstruction is commenced within three years from the date of destruction or damage.
2. The building or structure reconstruction must be completed and the use resumed within one year thereafter in compliance with existing construction and safety codes practices.
3. The restored building or structure or use shall be substantially as it existed prior to the said destruction or damage.

#### ~~D. — COTTAGE COLONY:~~

~~An existing nonconforming cottage colony may not be converted to single family use under separate ownership of a portion of the land unless the lot upon which each building is located complies with minimum requirements for single family dwellings in the zoning district in which the land is located.~~

#### E. USE DISCONTINUANCE

In the event that a nonconforming building or structure shall not be used, or a nonconforming use shall not be exercised for a period of two years, the right to maintain such nonconforming building or structure, or to carry on such nonconforming use shall be deemed to have been abandoned and extinguished. Thereafter, the premises shall be subject to the regulations herein applying to the zoning district in which they are located. These nonconformities are defined in III.A as those in existence at the passage of the By-law or

[subsequent applicable amendment.](#)

**E.F. CHANGE IN USE STATUS:**

A nonconforming use for a given property, superseded by an authorized use, may not be returned thereafter to a nonconforming use.

**F.G. EXISTING STRUCTURES AND USES:**

The application of this ~~Zoning~~[zoning](#) ~~Bylaw~~[By-law](#) to existing structures and uses is governed by General Laws, Chapter 40A, as amended, and shall not regulate the reconstruction or expansion of structures used for agriculture.

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## **III. IV. ESTABLISHMENT OF DISTRICTS**

### **A. TYPES OF DISTRICTS**

The Town of Rockport is hereby divided into the following types of districts:

- |    |                                 |                                      |
|----|---------------------------------|--------------------------------------|
| 1. | Single Residential AA Districts | SRAA <del>(added ATM 03/18/00)</del> |
| 2. | Single Residential Districts    | SR                                   |
| 3. | Residential A Districts         | RA                                   |
| 4. | Residential Districts           | R                                    |
| 5. | Semi-Residential Districts      | SMR                                  |
| 6. | General Districts               | G                                    |
| 7. | Downtown District               | D <del>(added ATM 4/9/2012)</del>    |

Note: The ~~several~~ Districts shall be denoted on the “Zoning Map” by the appropriate letters as indicated. ~~Each district, now established or hereafter established, shall be numbered consecutively.~~

### **B. LOCATION OF DISTRICTS**

The Zoning Districts established in the ~~by law~~ By-law are shown on a map entitled: PLANNING BOARD ZONING MAP, TOWN OF ROCKPORT, MASSACHUSETTS, dated 2022, hereinafter called the Zoning Map, the original of which, together with all amendments thereto and all explanatory matter thereon, is incorporated herein by reference and made a part hereof. All lawful amendments to the Zoning Map hereafter made shall also be a part hereof.

### **C. INTERPRETATION OF THE ZONING MAP**

The location of the boundary lines of the districts shown on the Zoning Map shall be determined as follows:

1. Where the boundary lines are shown upon said map within the street lines of public or private ways, or waterways, the center lines of such ways shall be the boundary lines.
2. Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot or boundary lines is not indicated by means of figures, then the property or lot lines shall be the boundary lines.
3. Boundary lines located outside of such street lines and shown approximately parallel thereto shall be construed as parallel to such street lines and figures placed upon said map between such boundary lines and street lines are the distances in feet of such boundary lines from such street lines, such distances being measured at right angles to such street lines unless otherwise indicated.

~~1.~~

4. In all cases which are not covered by the provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, or if distances are not given, then by the scale of said map.

~~2.~~5. Whenever any uncertainty exists as to the exact location of a boundary line, the location of such line shall be determined by the Building Inspector, provided however, that any person aggrieved by his decision may appeal to the Board of Appeals, as provided in [Section IX.C](#) **Part VI**.

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#### **IV.V. PERMITTED USES IN ZONING DISTRICTS (~~amended FTM-9/12/2011, ATM-4/9/2012 and FTM-9-17-2018~~)**

##### **A. GENERAL STATEMENT RELATIVE TO ALL DISTRICTS**

Uses, whether or not on the same parcel as activities permitted as a matter of right, or accessory to activities permitted as a matter of right, ~~which activities are necessary in connection with scientific research or scientific development or related productions,~~ may be permitted upon the issuance of a ~~special permit~~ Special Permit by the Board of Appeals, provided that the Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

##### **B. TABLE OF PERMITTED USES**

In case of a difference between the terms and conditions in this ~~Part H~~ Section and in Section III, the terms and conditions in the other parts in Section III shall govern.

Definitions of the abbreviations for Zoning Districts are given in Section ~~IIA~~ V.A.

~~“Y”~~ means use or structure permitted as of right.

“SP” means use or structure permitted only by grant of a Special Permit by the Board of Appeals.

“N” means use or structure not permitted.

Principal Permitted Uses and Structures						
<u>Uses</u>	Zoning Districts					
	SRAA & SR	RA	R	SM-R	G	D
<b>I. Residential</b>						
A. One family detached dwelling (limited to one single-family dwelling unit per lot)	Y	Y	Y	Y	Y	Y
B. The conversion of a dwelling that existed prior to July 14, 1951 (the date of the adoption of the Single Residential District) into a two-family dwelling, provided that the lot for the dwelling contains not less than the square feet of land area required in the Schedule of Area & Dimensions in <del>Part IV</del> <u>Section VI-B</u> :	Y	Y	Y	Y	Y	Y
C. The conversion of a dwelling into a two-family dwelling provided that the lot for the dwelling contains not less than the square feet of land area required in the Schedule of Area and Dimensions in <del>Part IV</del> <u>Section VI-B</u>	N	Y	Y	Y	Y	Y

Principal Permitted Uses and Structures							II
Uses	Zoning Districts						III
	SRAA &SR	RA	R	SM- R	G	D	IV
D. The construction of a two-family dwelling provided that the lot for the dwelling contains not less than the square feet of land area required in the Schedule of Area and Dimensions in <del>Part IV</del> , <u>Section VI</u> -B	N	SP	Y	Y	Y	Y	V
E. One accessory dwelling unit per lot, provided the minimum lot area required in the Zoning district where the lot is located is provided for each dwelling on the lot.	N	SP	SP	SP	SP	Y	VI
F. The conversion of any existing dwelling into a two-family or a multiple dwelling with not more than (4) dwelling units, or an inn, <del>provided that the size of the building shall not be increased by more than (10%) of the area which was originally used for habitation;</del> or act on anything relative thereto.	N	N	SP	SP	SP	SP	VII
G. New town houses and other multiple dwellings, not to exceed four dwelling units in any one structure, <del>provided that there is a minimum of ten thousand (10,000) square feet</del>	N	N	<del>NS</del> <u>P</u>	SP	SP	SP	VIII
H. <del>The conversion or new construction of a mixed use building with no more than 4</del>	N	N	N	N	N	Y	IX
<b>II. Educational, Institutional, Recreational and Agricultural Uses</b>							X
A. Educational purposes on land owned or leased by the Commonwealth or any of its agencies, sub- divisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation.	Y	Y	Y	Y	Y	Y	XI
B. Churches and buildings for religious purposes.	Y	Y	Y	Y	Y	Y	XII
C. Private clubhouse, meeting halls and lodge rooms to be used by fraternal or other	N	N	N	N	N	SP	XIII
D. The use of land for the primary purpose of agriculture, horticulture or floriculture.	Y	Y	Y	Y	Y	N	XIV
<b>III. Governmental and Public Service Uses</b>							

Principal Permitted Uses and Structures						
Uses	Zoning Districts					
	SRAA &SR	RA	R	SM- R	G	D
A. Transportation services, including railroad stations, bus passenger stations, bus terminals	N	N	N	N	N	SP
<b>IV. Retail Business and Consumer Service Uses</b>						
A. The office of a doctor or dentist or the member of a recognized profession residing on the premises, providing there is no display or advertising except for a sign of not more than three square feet.	Y	Y	Y	Y	Y	<del>SP</del> Y
B. Art gallery/studio, provided it does not cause noise, undue commotion or traffic which is detrimental to a residential neighborhood.	Y	Y	Y	Y	Y	Y
C. The short-term rental taking of boarders or the leasing of rooms by the person or persons residing on the premises, provided that there is no sign or display to advertise such use. See	SP	SP	Y	Y	Y	Y
D. <del>Guest houses, provided that there is no sign or display to advertise such use except that</del>	N	N	Y	Y	Y	Y
E. <del>Galleries or s</del> Studios for the instruction, practice and recital of musical instruments, voice, drama & dance provided that such work is not detrimental to the neighborhood because of noise or	N	N	SP	Y	Y	Y
F. Greenhouses and nurseries. A greenhouse or nursery may also sell products and items usually associated therewith.	N	N	SP	Y	Y	N
G. Stores, salesrooms, or showrooms for the conduct of a retail business, such as clothing and antiques, convenience stores and food stores; excluding, however, the display or sale of motor vehicles	N	N	N	Y	Y	Y
H. Personal service retail shops, such as a barber, hairdresser, photographic studios, professional offices or agencies, collection stations for laundry or dry cleaning	N	N	N	Y	Y	Y



Principal Permitted Uses and Structures						
Uses	Zoning Districts					
	SRAA &SR	RA	R	SM- R	G	D
I. Shops for custom work such as by a dressmaker, furrier, interior decorator, milliner, or tailor:	N	N	N	Y	Y	Y
J. Shops for custom work, such as a shop for a cabinet maker, job printer, repair of household appliances or furnishings, shoemaker, <del>blacksmith</del> , upholsterer or woodworker, provided that such work is not detrimental to the neighborhood because of noise, odors or vibrations:	N	N	N	Y	Y	SP
K. <del>Any of the following service establishments dealing directly with the consumer:</del> <u>Automobile</u> <del>R</del> repair shops for motor vehicles (provided that all work is performed within a building), <del>service stations, and similar services</del>	N	N	N	SP	Y	SP
L. Retail display and sale of motor vehicles:	N	N	N	SP	N	N
M. Craft shops such as frame shops, <del>artists'</del> <u>art galleries</u> /studios, shops fabricating wearing apparel or accessories:	N	N	N	N	Y	Y
N. Business or professional offices or agencies, <u>medical offices</u> , banks or other financial institutions:	N	N	N	N	Y	Y
O. <del>Food service establishments</del> <u>Carry out restaurants</u> that sell over a counter <u>for</u> <del>take-out service, such as bakeries, cafes</del>	N	N	Y	Y	Y	Y
P. Restaurants or other eating places serving food only to persons seated at tables or counters provided no mechanical or live entertainment is regularly furnished	N	N	N	N	Y	Y
Q. Funeral homes:	N	N	N	SP	Y	N
R. Indoor theatres:	N	N	N	N	SP	Y
S. Non-medical Marijuana Establishments; Marijuana Establishments	N	N	N	N	N	N
<b>V. Commercial and Industrial Uses</b>						
A. Lumber and fuel establishments	N	N	N	SP	Y	N

Principal Permitted Uses and Structures							II
Uses	Zoning Districts						III
	SRAA &SR	RA	R	SM- R	G	D	IV
B. Industrial buildings, including processing, fabricating, and assembly plants and manufacturing operations, provided they do not cause noise, odors, undue commotion or traffic which is detrimental to the neighborhood. The use of any land or building for the operation of the industry known as fish dehydration, fish processing or the manufacture of byproducts, so-called, from fish or fish waste, or the storage of such products is not permitted.	N	N	N	SP	Y	N	V
C. Parking lots for commercial vehicles	N	N	N	N	SP	N	VI
D. Industrial buildings, including processing, fabricating and assembly plants and manufacturing operations.	N	N	N	N	SP	N	VII
E. Wholesale business establishments	N	N	N	N	SP	N	VIII
F. Research laboratories	N	N	N	N	SP	N	IX
G. Contractor storage and repair facilities	N	N	N	SP	SP	N	X
H. Boatyards on lots of greater than 10,000 sf, in buildings approved by the Fire and Building Inspectors or in open air yards, providing that such lots have one waterfront boundary and that vessels, floats, and lifts, or cranes shall not be stored in the setbacks as specified in <a href="#">Section VI</a> . <del>Table IV-B.</del>	N	N	N	N	SP	N	XI
I. Boat yards on lots of less than 10,000 sf or lacking waterfront boundaries	N	N	N	N	SP	N	XII
J. New construction or manufacture of vessels, or parts thereof, or other marine structures of wood, metal, and plastic impregnated laminates in buildings or in open air yards	N	N	N	N	SP	N	XIII
<b>VI. Permitted Accessory Uses and Structures</b>							XIV
A. Gainful home occupation (including a reasonable display of goods) provided that there is no advertising sign except for a small announcement sign having an area of not more than three square feet, <del>and further provided that such occupation shall be carried on only by the</del>	Y	Y	Y	Y	Y	Y	

Principal Permitted Uses and Structures						
Uses	Zoning Districts					
	SRAA &SR	RA	R	SM- R	G	D
B. The occupation of a member of a recognized profession, trade, or service residing on the premises, and conducting the occupation primarily off the premises, providing there is no display or advertising except for a sign of not more than three square feet, and that occupation does not cause noise, undue commotion or traffic which is detrimental to a residential neighborhood and there are no more than 2 vehicles (business related) on the premises at any time.	Y	Y	Y	Y	Y	Y
C. Accessory uses normally associated with a one- family detached dwelling, provided that such accessory uses are not detrimental to a residential neighborhood.	Y	Y	Y	Y	N A	Y
D. Accessory uses normally associated with the permitted use allowed on each lot, provided that such accessory uses are not detrimental to a residential neighborhood	N	Y	Y	Y	N A	SP
E. Such light manufacturing as is incidental to and usual in connection with any permitted uses on the same premises, provided that such light manufacturing is not detrimental to the neighborhood because of noise, odors or vibration.	N	N	N	N	Y	N
F. Such storage of materials, equipment and merchandise as is incidental to and usual in connection with any permitted uses on the same premises.	N	N	N	N	Y	N

## ~~V.~~VI. AREA AND DIMENSIONS REGULATIONS

### A. GENERAL REQUIREMENTS

1. **Applicability:** Except as hereinafter provided, no dwelling house, no principal building or structure, nor any accessory building or structure shall be erected on a lot in any district unless the lot and building or structure shall conform to the requirements in the Schedule of Area and Dimensions. (~~amended ATM-4/9/2012~~)
2. **Projections:** Nothing herein shall prevent the projection of cornices or eaves not exceeding eighteen inches in width, or of uncovered steps, not exceeding more than forty-eight inches from the structure, into any required yard or other open space.
3. **Gable Dormer:** A gable dormer has a ridge line running perpendicular to the ridge line on the wing of the house on which it is placed, and has a sloped roof. The front wall of the dormer shall be set back from the outside edge of the soffit. The length shall not exceed 60% of the length of the ridge line of the roof from which it emanates, with a gable wall setback of four (4) feet, or whichever results in a smaller dormer. The pitch of the dormer roof shall be the same as that of the roof from which it emanates. The word “dormer” refers to one or more dormers. (~~Added FTM 9-12-11~~)
4. **Shed Dormer:** A shed dormer has a ridge line parallel to the ridge line of the wing of the house on which it is placed. The front wall of the dormer shall be set back from the outside edge of the soffit. The length shall not exceed 80% of the length of the ridge line of the roof from which it emanates, with a gable wall setback of two (2) feet, or whichever results in a smaller dormer. The pitch of the dormer roof shall be a minimum of 3:12 and shall not rise above the ridge line of the roof from which it emanates. (~~Added FTM 9-12-11~~)
5. **Height Limitations:** No building in any district shall exceed ~~thirty~~30 feet in height or two and one-half stories above the ground. Buildings can exceed these limits when authorized by a ~~special permit~~Special Permit issued by the Board of Appeals. The height limitation shall not apply to private radio or television antenna, chimneys, flagpoles, church spires, belfries, monuments, water towers or municipal fire towers.
6. **Corner Lots:** For purposes of this ~~By-law~~By-law, corner lots shall be considered to have two front yards. The setback of each front yard shall be considered individually. **ACCESSORY DWELLINGS:** An accessory dwelling shall be separated from all other buildings used in whole or in part for human habitation, on the same lot, by a minimum of twenty (20) feet.

- ~~7. **RETAIL AND COMMERCIAL USE:** The following requirements shall apply to all retail and commercial uses of property, in any district, and shall apply to all new construction, reconstruction, conversions, remodeling and subdivisions, of retail and commercial property. There shall be excluded herefrom only (i) those retail and commercial uses of property that existed on the date of enactment of these provisions. (ii) offices where no merchandise is displayed and (iii) gainful home occupations as defined in Part I.C. hereof.~~
- ~~a. The minimum floor area devoted to retail or commercial use (including inventory storage and other “backroom” or auxiliary retail functions) shall be 400 square feet per unit. However, in the case of four or more units in the same building under the same ownership, up to one-fourth of those units may be as small as 200 square feet per unit, provided that the average of all units in the building remains 500 square feet per unit or greater.~~
  - ~~b. The minimum dimension in any direction (width, length, or depth) of the retail or commercial area open to the public shall be an average of 10 feet.~~
  - ~~c. The maximum number of retail or commercial units on any floor of any building shall be four.~~
  - ~~d. There shall be at least one rest room in each building, devoted to retail or commercial use, for the use of the employees of the retail and commercial enterprises located therein. In addition, any restaurant, or any other building containing four or more retail or commercial units, shall provide at least one rest room for use by customers.~~
  - ~~e. No license or permit (including, but not limited to, a building permit, vendor's license or common victualer's license) shall be issued by any officer, board or agency of the town with respect to any proposed construction, reconstruction, conversions, remodeling, subdivisions, or change of use which does not comply with these standards or for any retail or commercial use proposal to be located in a unit or building which violated these restrictions and provisions.~~
  - ~~f. The use of floors above the first of retail and commercial property is limited to dwellings, professional or business offices, agencies, studios or storage for the first floor retail or commercial use. Other retail and commercial uses of floors above the first may be granted by special permit from the Board of Appeals.~~

- 9.7. Lot Width:** Each lot created shall have at least a minimum lot width of forty feet between the side lot boundary lines from the front to the rear of the lots. Since the side lot boundary lines may be irregular, the lot width shall be measured by a circle of forty feet in diameter inscribed within the side lot of boundary lines. For lots which cannot conform to this width, a ~~special permit~~[Special Permit](#) may be granted by the Board of Appeals.

~~10.8.~~ **Driveways:** Driveways in excess of 500 feet shall be of sufficient width, suitable grade, and adequate construction to allow for access by emergency vehicles. ~~(Added FTM 9-12-11)~~

**9. Residential Dwellings** ~~(Added FTM 9/14/2015):~~

- a. Application and Purpose: This Section applies to residential buildings in the SRAA, SR, RA, and R zoning districts. The purpose of this Section is to require a minimum proportionality between the size of a building lot and the buildings on that lot.
- b. Aggregated Gross Floor Area: “Aggregated Gross Floor Area” is the sum of the Gross Floor Areas of existing or proposed buildings.
- c. Gross Floor Area and Side Setbacks:
  - i. On a lot of 2 acres or less, no residential building, or any combination of a residential building and accessory building(s), shall have an aggregated Gross Floor Area of greater than 7,000 square feet. The limitation of this section shall apply to the aggregated Gross Floor Area of an existing or proposed residential building and an accessory building proposed for construction on the same lot.
  - ii. Residential and accessory buildings shall have the following side setbacks:
    - 20 ft.—for residential buildings with 4,000-5,999 square feet of Gross Floor Area or for any combination of residential and accessory buildings with 4,000-5,999 square feet of Aggregated Gross Floor Area.
    - 25 ft.—for residential buildings with 6,000 square feet or more of Gross Floor Area or for any combination of residential buildings and accessory buildings with 6,000 square feet or more of Aggregated Gross Floor Area.

**B. SCHEDULE OF AREA AND DIMENSIONS – ACCESSORY BUILDINGS OR STRUCTURES** ~~(amended ATM 4/9/2012 & 9/14/15 & FTM 9-17-2018)~~

Zone	SRAA Single Res. AA*	SR Single Res.	RA Residential A	R Residential	SMR Semi- Residential	G General	D Downtown ***
<b>Minimum Lot Dimensions</b>							
Area square feet- <del>one</del> + family	40,000	20,000	12,000	10,000	10,000	7,500	5,000
Area square feet- Two family	40,000	20,000	20,000	<del>15,000</del> 10,000 0	15,000	7,500	7,500
Area square feet – other uses***	40,000	20,000	20,000	15,000	15,000	7,500 (10,000 ( <del>65</del> ))	7,500
Frontage on street or way	150	75	75	50	50	50	30
<b>Minimum Required Yard Dimensions/Setbacks (1,<del>87</del>) *****</b>							
Front Yard (2)	20	20	20	20	20	15	10 (2A)
Side Yard	15	15	15	10	10	10	10
Rear Yard	15	15	15	10	10	10	10
<b>Max. Bldg. Height (3)</b>							
Stories ( <del>4</del> )	2.5	2.5	2.5	2.5	2.5	2.5	2.5
Feet	30	30	30	30	30	30	30
<b>Coverage (<del>98</del>) **</b>							
Bldg Coverage % of square feet	10%	15%	20%	25%	25%	50%	50%
<b>Accessory Buildings or Structures (<del>54</del>) (<del>65</del>) (amended ATM 4/9/2012)</b>							
Min. Bldg. Separation	15	15	15	15	15	10	10
Side/rear setbacks	10	10	10	10	10	10	10

- (1) As measured perpendicular to nearest street or way. The front yard setbacks listed in this column apply to all buildings and structures.
- (2) Front Yard Set~~b~~-Back requirements for residential buildings may be reduced if the setbacks of residential buildings on adjoining lots are less than the minimum front yard set-back specified herein. In such cases the set-back requirement shall be determined by taking the average set back of all residential buildings on the adjoining lots as the set-back for the lot under

consideration. In the case of a lot having more than one front yard, each average set back shall be calculated individually, using set-backs from the same street or way. ~~(Amended-ATM-6/10/02)~~

(2A) Within the D District, the provisions of Footnote 2 apply to determining the Front Yard Setback of any structure. The Board of Appeals may grant a Special Permit for a lesser setback than the calculated average setback, including zero ~~(0)~~ feet. ~~(Added FTM 9/12/11)~~

(3) Vertical distance to ridge or highest point of roof. The methodology for determining the elevation of the lot grade prior to site preparation shall be published by the Building Inspector in consultation with the Planning Board. For each determination, the Building Inspector shall state the reason or reasons for choosing the methodology. No deck shall be constructed above the elevation of the highest habitable story of the structure.

~~(3)(4)~~ Half stories with a pitch of no less than 4:12, whose habitable square foot floor area shall not exceed 66% of the square foot floor area of the story directly below it, or 66% of the floor area of the wing of the building directly below it, whichever is smaller. Habitable square foot floor area under a roof is defined in the State Building Code.

~~(4)(5)~~ Accessory Buildings or Structures: For purposes of side and rear set-backs only, swimming pools and tennis courts are deemed to be accessory buildings. Accessory Dwellings: An accessory dwelling shall be separated from all other buildings used in whole or in part for human habitation, on the same lot, by a minimum of twenty (20) feet. (amended ATM 4/9/2012)

~~(5)(6)~~ For the purpose of computing Minimum Building Separation, attached decks are deemed to be part of the building". ~~(added-ATM 4/9/2012)~~

~~(6)(7) Minimum lot area for boat yards.~~Reserved

~~(7)(8)~~ Minimum required yard dimensions. These dimensions apply to accessory dwellings.

~~(8)(9)~~ For lots that will not conform to building coverage requirements, a ~~special permit~~Special Permit may be granted by the Board of Appeals.

~~\* Amended ATM 03/18/00 to include Single Residential AA Districts (SRAA)~~

~~\*\* Amended STM 9/8/03 to include building coverage~~

~~\*\*\* Amended FTM 9/12/11 to include Downtown District & Area of sq. ft other uses.~~

~~\*\*\*\* Amended FTM 9/14/15 to include Residential single, two family and multiples~~



~~dwelling, accessory buildings, and townhouses shall have the following side setbacks: 20 ft. for buildings with 4000-5999 sq. ft. GFA and 25 ft. for buildings with greater than 6000 sq. ft. GFA~~

NOTE: All dimensions are in feet unless otherwise noted.

### C. MODIFICATIONS AND EXCEPTIONS

1. **Tidal Boundaries:** Where any portion of a lot is covered by tidal waters, the mean high water line as established by the U.S. Coast and Geodetic Survey shall be considered the boundary or boundaries in computing the size of the lot, the square foot area of the lot and the setback of the lot.
2. **Accessory Building Yard Dimension:** Minimum required yard dimensions may be reduced for accessory buildings by a ~~special permit~~ Special Permit issued by the Board of Appeals.
3. **Existing Lots:** Any lot which, at the time of the passage of the 1951 Zoning ~~By-Law~~ By-law, or any amendment thereof, was of lesser area than therein specified, and which was described in a deed or shown on a plan recorded with the Registry of Deeds, may be built upon, provided however, that said lot was not subsequently diminished in area, and provided further that if, at the time of the passage of the Zoning ~~By-Law~~ By-law, or of any amendment thereof, there was other contiguous land of the same owner which might be used in connection with such lot, such contiguous land was used to the amount necessary to conform to the requirements of this section, and such lot was not thereafter diminished in area below the requirements stated in this section. In the case of any lot so described or shown in the Registry of Deeds which is without sufficient other land of the same owner contiguous and capable of use to constitute a lot of the area required in this section, on such lot, the owner may erect and maintain one dwelling and such other structures as will comply with all regulations herein specified except for minimum lot area, provided, in all cases that a lot has at least five thousand square feet of area or fifty feet of frontage. For lots having less than five thousand square feet or fifty feet of frontage the Board of Appeals may grant ~~special permit~~ Special Permits for the use of such lots.
4. ~~Sraa~~ SRAA **Zoning District Lot Area Definition:** For all residential and non-residential buildings, the lot area required for zoning compliance in the SRAA zoning district shall not include areas subject to protection under Massachusetts Wetlands Protection Act or anything relative thereto (M.G.L. GL c.131, s.40) and the regulations adopted thereunder, as amended, and/or resource areas subject to protection under the Rockport Wetlands ~~By-Law~~ By-law (Chapter 14A of the Rockport code of ~~By-Law~~ By-laws), as amended, whichever is more restrictive. ~~(Added ATM 03/24/01).~~

## **VI.VII. PARKING REQUIREMENTS**

### **A. GENERAL PARKING REQUIREMENTS TABLE OF OFF-STREET PARKING REQUIREMENTS**

The minimum number of off-street parking and loading spaces shall be as set forth in the following table.

<u>Use</u>	<u>Minimum Number of Spaces</u>
<b><u>Residential Uses</u></b>	
<u>Single-Family and Two-Family</u>	<u>1 space per unit</u>
<u>Multifamily, Mixed-Use and Townhome</u>	<u>1 space per unit</u>
<b><u>Business or Industrial</u></b>	
<u>Retail stores, including consumer service establishments and shops for custom work</u>	<u>1 space per 400 sq. ft of gross floor area</u>
<u>Banks and Financial Institutions</u>	<u>1 space per 500 sq. ft of gross floor area</u>
<u>Professional or Medical Offices</u>	<u>1 space per 500 sq. ft of gross floor area</u>
<u>Restaurants (including carry out) and other eateries</u>	<u>1 space for every three seats</u>
<u>Hotels, motels and inns <del>-and-</del> other places offering overnight establishments</u>	<u>1 space for every room</u>
<u>Wholesale, storage, industrial and manufacturing uses, including business service establishments</u>	<u>1 space per 600 sq. ft of gross floor area</u>
<b><u>Other Uses</u></b>	
<u>All other uses not listed</u>	<u>1 space per 400 sq. ft of total building area</u>

~~No inn, hotel, business, guesthouse, apartment house, townhouse, multiple dwelling, office of a doctor or dentist, or business or industrial building shall be erected or externally enlarged unless there is provided on the lot of land associated therewith, off-street automobile parking space on the basis of the following minimum requirements: Retail stores, shops for custom work, consumer service establishments, offices and banks—at least one off-street parking space for each one hundred eighty (180) square feet of ground floor area and for each three hundred square feet of useable area, other than ground floor area; and, in addition, a minimum of one parking space for every employee working in a building at any given time. Restaurant and other eating places, theaters—at least one off-street parking space for each three seats that are provided for patron use plus one additional space for each three employees. All places offering overnight accommodations—at least one and one half spaces for each guest room.~~

~~Wholesale, storage, industrial and manufacturing uses, including business service establishments, such as printing, engraving and blueprinting, warehouses and material storage and sales yards, research laboratories, and processing, fabricating and assembly plants—at least one off-street parking space for each two persons employed or anticipated being employed on the largest shift.~~

~~Apartment house, townhouse and multiple dwelling—at least one and one-half off-street parking spaces for each dwelling unit, with no spaces to be located between the building and the street.~~

- ~~1. All other uses not provided for—at least one space for each use or at least one off-street parking space for each four hundred (400) square feet of floor area of the building, whichever is greater.~~
- ~~2. For the purpose of this bylaw, a space of 200 square feet of approximate dimensions for the parking of an automobile, exclusive of access drives or aisles, shall be considered as one (1) off-street space.~~

## **B. LOCATION OF PARKING SPACES**

For multifamily, townhouse, and mixed-use dwellings, parking spaces shall not be located between the building and the street.

### **B.C. JOINT AND MIXED USES SHARED PARKING**

~~In the case of mixed uses in the same building or on the same lot, or the joint use of spaces by two or more separate buildings or uses, the total requirements for off-street parking space shall be the sum of the requirements of the various buildings and uses computed separately.~~Shared use may be made of required parking spaces when determined by the Planning Board to be appropriate based upon an analysis of peak demands. In making such determination, the Planning Board may consider complementary uses and activities having different peak demand periods to share parking facilities, transportation demand management (TDM) measures, and such other means as may be applicable. The Planning Board may require an evaluation prepared by the applicant following the procedures of the Urban Land Institute (ULI) Shared Parking Manual (latest edition) or the ITE Shared Parking Guidelines (latest edition), or other approved procedures determined by the Board. The Planning Board may approve a parking reduction where an active carsharing program is made available to residents and/or employees of a development site, and where cars for the carshare program are available on the site or within a 700-foot walking distance of the site.

### **C.D. CONVERSIONS**

Buildings converted to any of the above uses shall provide parking as required above. Any inn, hotel, business and industrial building existing on July 1, 1975 if not externally enlarged is exempted and not required to comply with the provision of Section V.A and V.B.

### **D.E. GREENBELT**

1. All parking areas for more than five vehicles must have a greenbelt measuring at least four ~~(4)~~ feet on the sides and rear, and six ~~(6)~~ feet on the front. Whenever possible, parking must be to the rear of the building.

2. A shield of dense shrubbery or a stockade fence must be provided for screening if a residence is within 75 feet of the parking area.
3. One tree, at least three inches in diameter at the base, shall be provided for each six parking spaces or fraction thereof.

#### **E.F. PLANS REQUIRED**

No building permit for the erection, external enlargement or conversion of any building for which parking would be required shall be issued without the submittal of an off-street, on-site parking plan which includes:

1. The quantity, location and dimensions of all driveways, maneuvering spaces and aisles, parking spaces, drainage facilities and landscaping (greenbelt);
2. The locations, size and type of materials for surface paving, curbing, or wheel stops, trees, screening and lighting;
3. The location of all buildings, lot lines, and parking areas, showing setback lines and distances;
4. Such other information as the Building Inspector may reasonably require.

All plans required hereunder shall be filed with the Building Inspector, shall be drawn to scales and shall be a scale of not less than one inch equals forty feet.

#### **~~F. SINGLE AND TWO-FAMILY DWELLINGS~~**

~~One on-site, off-street parking space shall be provided for each dwelling unit.~~

#### **G. EXTERNAL ENLARGEMENT**

A building shall not be considered externally enlarged unless it exceeds 10% of the first floor area existing on July 1, 1975.

#### **H. ~~MODIFICATIONS~~ WAIVERS FROM PARKING REQUIREMENTS**

~~The Parking and Greenbelt requirements set forth in the Part V. may be modified by a special permit issued by the Board of Appeals.~~

The Planning Board may waive strict adherence to the requirements of this Section if it finds such application demonstrates satisfactory parking adequacy as evidenced by the results of a parking study conducted pursuant to the standards of the ITE and/or the ULI prepared by a Professional Engineer duly licensed in the Commonwealth of Massachusetts with demonstrated experience in the Fields of Traffic Engineering and Transportation Planning, and concurrence with said results by the Zoning Board of Appeals' review consultant.

## ~~VII.~~VIII. SPECIAL REGULATIONS

### A. EXCAVATIONS ABUTTING ROADS

No excavation lower than the grade of any road upon which such excavation abuts shall be made nearer than 20 feet from such road boundary and the slope on any side of the excavation abutting on a road or an adjoining property shall not be steeper than the angle of repose of that particular soil except as may be authorized by a ~~special permit~~ Special Permit issued by the Board of Appeals.

### ~~B. EXTERIOR LIGHTS FOR NON-RESIDENTIAL USES (Amended FTM 9-11-17)~~

### ~~C. —~~

### ~~D. Any newly installed or replaced luminaire with a lamp or lamps rated at a total of 1800 lumens or more and any newly installed or replaced floodlight or spotlight luminaire rated at a total of 900 lumens or more shall not emit light beyond the lot (property) line on which the luminaire is located.~~

### ~~E. —~~

### ~~F. In case of a dispute, a difference of more than 0.1 foot-candles measured with and without the light(s) turned on in darkness, at a height of five (5) feet at the lot (property) line, will indicate noncompliance. The measurement will be made with a calibrated light meter directed at the luminaire.~~

### ~~G. —~~

### ~~H. Municipal streetlights and all temporary or emergency lighting used by police, fire or other emergency services, and temporary holiday lights, are exempt from this restriction. (Amended 03/24/01)~~

### ~~I. —~~

### J.B. AUTOMOBILE SERVICE AND FILLING STATIONS

Automobile service and filling stations and car washes, where permitted, are subject to the following requirements:

1. No automobile service or filling station or car wash shall be constructed on a lot having less than ~~two hundred (200)~~ feet of frontage or on a lot having less than forty thousand ~~(40,000)~~ square feet of lot area.
2. On each lot used for automobile service or filling stations or car washes there shall be provided front, rear and side yard setbacks of not less than ~~fifty (50)~~ feet.

3. An open space, not less than ~~twenty~~ 20 feet in depth, shall be maintained along the front, sides and rear of each lot used for automobile service or filling stations or car washes, except for entrance and exit driveways, and such open spaces shall not be built upon, used for parking or paved. They shall be maintained as open spaces and shall be covered with grass, plants, flowers and trees.
4. Each automobile service or filling station or car wash site shall be provided with not more than two ~~(2)~~ motor vehicle driveways for each abutting street. Each driveway shall intersect the abutting street at an angle of ~~ninety~~ 90 ~~(90)~~ degrees. No entrance shall consist of a continuous apron along the frontage of the lot. No entrance shall be more than forty feet in width.

#### **K.C. NON-ACCESSORY SIGNS AND BILLBOARDS**

Billboards and similar signs are specifically prohibited in the Town of Rockport. The only signs allowed in the Town of Rockport are signs that advertise, call attention to, or indicate the person occupying the premises on which the sign is erected or maintained or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter. Non-accessory signs are specifically prohibited in the Town of Rockport.

#### **L.D. RAISING OF CERTAIN ANIMALS**

The Board of Appeals may grant ~~special permit~~ Special Permits for the raising or maintaining of horses, cattle, poultry, fur-bearing animals, and the operation of a kennel in any district, and the Board may impose such restrictions and provide such regulations with respect to the conduct thereof as in its judgment may seem necessary for the general welfare of the Town. No horses, cattle, poultry or fur-bearing animals, shall be maintained or raised and no kennel shall be operated in any district without a ~~special permit~~ Special Permit issued by the Board of Appeals. The maintaining and keeping of a horse, (including ponies, mules, and donkeys), a home flock of chickens, geese and ducks, and pets, may be done without a ~~special permit~~ Special Permit, subject to the following conditions:

1. No horse may be maintained on a property of less than 10,000 square feet.
2. A minimum setback of 10 feet from all property lines or the established setback of the zoning district, whichever is greater, shall apply to all bounds of a paddock.
3. A minimum setback of 20 feet from all property lines or the established setback of the zoning district, whichever is greater, shall apply to all bounds of a stable.
4. Not more than three horses may be maintained on any property, and then only for the private use of the occupant or resident owner.

In addition, the Board of Health must approve the maintaining and keeping of the animals and may impose such requirements as are necessary to protect the public health.

This Section ~~E-D~~ shall not regulate or restrict the use of land for the primary purpose of agriculture, horticulture or floriculture on parcels of more than five acres.

### **~~M.E.~~ TRAILERS**

Home trailers, also known as mobile homes, shall not be used for dwelling purposes in any part of Town. Home trailers may not be stored in any part of Town except unless granted a Special Permit by the Zoning Board of Appeals. If granted, a Special Permit for the storage of home trailers shall not exceed 30 days in any calendar year. ~~Automobile trailers, commonly known as home trailers, shall not be used for dwelling purposes in any part of Town nor shall such trailers be stored or parked on any premises in a residence district except that the Board of Appeals may upon written application grant to an owner of premises in any residence district a special permit for the storing or parking of automobile trailers of the nonresident guests of such owner on such premises upon such conditions as the said board may prescribe and for a period not to exceed thirty days in anyone calendar year, and except, the Board of Appeals may upon written application grant to an owner of a residence lot or site, a special permit~~Special Permit ~~for dwelling purpose use of an automobile trailer, provided such owner has secured a building permit for the construction of a dwelling on such lot or site, upon such conditions as the Board of Appeals may prescribe and for a period not to exceed one year.~~

A single camping trailer, utility trailer, horse trailer, boat or pick-up camper, not exceeding 24 feet in length, used by the resident for his own use, may be stored on a residential lot. No such trailer, camper or boat may be used for a dwelling on a residential lot.

### **~~N.F.~~ FENCES**

No fence shall exceed four ~~(4)~~ feet in height above the ground on any lot lying between the coastline and the nearest public way.

### **~~O.G.~~ ALTERNATIVE ENERGY SOURCES**

The Board of Appeals may grant permits for equipment of facilities to utilize alternative energy sources. The Board of Appeals may, in any such permit, waive the height, setback and dimensional requirements in this ~~by-law~~By-law.

Before granting a ~~special permit~~Special Permit for Wind Energy Conversion Systems (WECS), and in applying the guidelines set forth in this ~~By-law~~By-law, the Board of Appeals shall consider the following factors:

1. **Use:** The WECS should be designed to provide a majority of its average power output for use by the home to which it is an accessory.
2. **Setbacks:** The minimum setback for a WECS from any abutter's property line,



or easement from that abutter, shall be at least equal to the height of the tower plus the length of the propeller blade as measured from the center of the tower base, and in addition, the tower plus propeller length shall clear all overhead electric power lines.

3. **Tower Access:** climbing access to the WECS tower shall be limited either by
4. The installation of a fence with locked gates around the tower bases or (2) by limiting lower climbing apparatus to no lower than 10 feet from the ground. If a fence is used, it shall be no lower than five feet and constructed in such a manner as to restrict passage through said fence.
5. **Maintenance:** A WECS shall be inspected and serviced annually according to the manufacturer's maintenance manual and will be considered abandoned if not properly maintained for a period of one year or if designated a safety hazard by the Building Inspector. The owner of any WECS which is considered to be abandoned or designated a safety hazard shall be required to dismantle the installation.

All WECS shall be removed by the owner of the facility and at the owner's expense within 6 months of any declaration of a safety hazard, and within one year of declaration of abandonment by the Building Inspector. The applicant shall post a bond with the Town Treasurer at the time of the issuance of the Special Permit to cover the costs for the removal of the WECS in the event the Town must remove said facility. The amount of the bond shall be determined by the [Planning Board of Appeals](#). (~~added ATM-4/9/2012~~)

6. **Noise and Electromagnetic Interference:** Noise produced by the WECS shall not exceed the average ambient noise level as measured at the base of the tower. WECS generators, alterations and cables shall be shielded and or filtered to prevent the emission of radio frequency energy which may cause interference with radio and/or television reception.
7. **Safety:** The WECS manufacturer shall document that the WECS model operated safely in similar atmospheric conditions for a period of not less than one year. The WECS shall be equipped with a mechanism for locking the propeller in a fixed position at the maximum safe wind speed specified by the manufacturer.
8. **Construction:** Construction of the WECS tower shall be in accordance with all applicable provisions of the state and local building codes for safe tower construction and support. The manufacturer of the WECS shall provide all drawings, specifications, and manuals for the entire WECS and these shall be certified by a registered professional engineer who shall also certify the suitability of the WECS for the site chose for its construction.

Solar Panels, which do not exceed one foot in thickness, nor extend more than two feet from a building, may be installed on the roof or side of a building as a matter of right, without any ~~special permit~~[Special Permit](#).



**~~P.~~—MICROWAVE ANTENNAS**

**~~Q.~~—**

**~~R.~~—Microwave antennas two feet or less in diameter are permitted as a matter of right. The Board of Appeals may grant a special permit for microwave antennas greater than two feet in diameter for reception of microwave signals from geostationary satellites which meet the following conditions:**

**~~S.~~—**

**~~T.~~—The microwave antenna shall consist of a parabolic reflector (microwave dish) with a microwave receiver at the reflector focus.**

**~~U.~~—The microwave antenna shall be permanently mounted on the ground on a concrete slab or piers and setback from lot lines according to the Schedule of Areas and Dimensions, Accessory Buildings of the Zoning by Law.**

**~~V.~~—The manufacturer or a structural engineer shall certify that the microwave antenna and its support is satisfactory to withstand wind speeds to 100 miles per hour without being carried away.**

**~~W.~~—**

**~~X.~~H. SEPTIC SYSTEMS**

On-site sewerage systems shall be on the lot on which the building serviced by the system is located. An on-site sewerage system servicing more than one lot is prohibited.

**~~Y.~~I. HOUSING BALANCE**

In order to assure that new residential development being granted special consideration under the Zoning ~~By Law~~By-law will, at minimum, meet its own share of providing for the diversity and balance of housing in Rockport, the following shall be complied with by all housing developments of six more residential units authorized by Special Permits.

1. At least 10% of the housing units shall be affordable to households having annual incomes that do not exceed the maximum levels for ~~Low or Moderate Income~~Low- or Moderate-Income Housing as established by the ~~Commonwealth's~~ Department of Housing and Community Development, and as may be revised from time to time. Fractional requirements of 0.5 or more shall be rounded to the next higher number, others being rounded downward. ~~(Amended ATM 4-9-12)~~
2. An alternative effort approved by the ~~Special Permit Granting Authority~~Planning Board shall be made, determined by that authority to make not less contribution than the above toward meeting the goal of economically balanced development.

3. Continuing affordability shall be assured for at least ~~thirty~~(30) years through means enforceable by the Town. Applicants shall be required to submit income information sufficient to prove to the local housing trust, housing authority or other agency as established by the Town that his/her or their family's annual income level does not exceed the maximum levels for ~~Low- or Moderate-Income~~Low- or Moderate-Income Housing as established by the ~~Commonwealth's~~ Department of Housing and Community Development, and as may be revised from time to time. (~~Amended-ATM 4-9-12~~)
4. The ~~Special Permit Granting Authority~~Planning Board, upon its approval of units as being affordable, shall notify the Department of Housing and Community Development, ~~Massachusetts Executive Office of Communities and Development (EOCD)~~ of that action, together with plans, and shall seek reflection of those units in Department of Housing and Community Development, ~~EOCD~~ determination of local housing need under ~~Chapter-MGL c.40B-M.G.L.~~

## **Z.J. PERSONAL WIRELESS SERVICES FACILITIES**

1. **Purpose:** The Federal Telecommunications Act of 1996, 47 U.S.C. 332 (c) (7), preserves the authority of municipalities to regulate the placement, construction and modification of personal wireless service facilities, but provides that municipalities shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless service facilities.

Because of the current technological requirements of personal wireless services, there are a finite number of potential sites to construct such facilities. The purpose of this ~~By-law~~By-law is to comply with the Federal Telecommunications Act of 1996 by establishing predictable and balanced regulations of wireless communications facilities that:

- a. ensure that wireless communication facilities are sited, designed, constructed and screened in a manner that is sensitive to the aesthetic and visual resources of the surrounding neighborhoods and the Town of Rockport in general;
- b. protect the public and the public welfare against the adverse impact of such facilities;
- c. regulate the number and height of such facilities and promote the shared use of facilities to reduce the need for multiple towers and/or facilities.

### **2. Definitions:**

- d. ~~Wireless Communications Facility means all materials, equipment,~~

~~devices, storage buildings, towers, dishes and antennas, used by a commercial telecommunications carrier to provide cellular radiotelephone services and/or data services and/or personal communication services (PCS). This definition does not include facilities used by a federally licensed amateur radio operator.~~

~~e. Tower means any mounting structure, including existing water supply tanks or standpipes and fixed derricks, that is used to support reception and/or transmission equipment.~~

~~f. Antenna for purposes of this by law the word "antenna" shall include all panels, dishes or other types of equipment used to propagate radio frequency signals, or similar devices.~~

~~g.a.~~ a. Non-residential building. ~~f~~ For the purpose of Section ~~LJ~~ means, any building that is not used in whole or in part as a dwelling. So called "mixed uses" where a portion of the building is used as a dwelling and the remainder is used for retail, commercial, office or similar uses are excluded from the definition of non-residential buildings. Likewise, buildings which are accessory to a dwelling, such as a garage, barn, carriage house, shed, greenhouse or similar type buildings, are excluded from the definition of nonresidential buildings.

### 3. General Conditions

a. Any wireless communication facility requiring a tower and/or building to house equipment, shall only be erected, installed and utilized in a Wireless Communication Facility Overlay District ("WCFO").

b. In all cases a Special ~~Use~~ Permit ("~~SUP~~") is required from the Planning Board of Appeals ("the Board") in accordance with Section ~~XIV.B. Administration, C, 6. and 7.~~

c. Where the erection or installation of a tower is required, only freestanding monopole towers without guy wires, are allowed as specified in paragraph 5 below. Lattice style towers and similar structures requiring three or more legs and/or guy wires are prohibited.

~~h.~~

d. All wireless communications facilities shall be suitably screened from abutters and residential neighbors and shall be designed and installed to minimize equipment noise.

e. All towers (except where existing water supply tanks or standpipes or fixed derricks are used), antennas, structures and equipment, shall be removed by the owner of the facility and at the owner's expense within one (1) year from the date of cessation of use as a wireless communications facility. The applicant shall post a bond with the Town Treasurer at the time of the issuance of the Special Permit to cover the

costs for the removal of the wireless communications facility in the event the Town must remove said facility. The amount of the bond shall be determined by the Board of Appeals.

~~i.~~  
~~j.f.~~ Where applicable, annual certification, signed by a Radio Frequency Engineer, stating that the RFR measurements are accurate and demonstrating continued compliance with RF and all other standards of the Federal Communications Commission (“FCC”), Federal Aviation Administration (“FAA”) and American National Standards Institute (“ANSI”) and required maintenance shall be filed with the Building Inspector by the Special-Use Permit holder.

#### ~~2.4.~~ **Application Process**

All applications for wireless communications facilities shall be made and filed in compliance with the requirements for Special Permits under the Zoning ~~By-Law~~By-law and the Board of Appeals Rules of Procedure. In addition, the following information shall be submitted along with the application form:

- a. A locus plan at a scale of 1”=100’ which shall show all property lines, the exact location of the proposed wireless communications facility, existing streets, landscape features, and all buildings within five hundred (500) feet of the facility.
- b. Color photographs or renditions of the proposed wireless communications facility, including towers and antenna. A rendition shall also be prepared illustrating a view of the tower or antenna from the nearest street or streets and eight (8) radial views at forty-five (45) degrees of the site.
- c. Where applicable, the following information prepared by one or more professional engineers:
  - i. a description of the tower and technical, economic and other reasons for the proposed location, height and design.
  - ii. confirmation that the tower complies with all applicable federal and state standards.
  - iii. a description of the capacity of the tower including the number and types of panels, antennas, dishes and/or transmitter receivers that it can accommodate and the basis for these calculations.
- d. A written statement that the proposed facility complies with, or is exempt from, applicable regulations administered by the FAA, the FCC, the Massachusetts Aeronautics commission and the Massachusetts Department of Public Health.
- e. Where a tower is to be erected and installed, the applicant shall place a crane extended to the height of the proposed tower on the site for one day. The date and times that the crane will be on the site shall be advertised in

the Gloucester Daily Times on two dates at least one week before the event. The applicant shall take photographs of the extended crane from the nearest street or streets and eight ~~(8)~~ radial views at ~~forty-five (45)~~ 45 degrees of the site from a distance of ~~three hundred (300)~~ feet. Where the applicant proposes to install antennas on an existing water supply tank or standpipe or fixed derrick, they shall take photographs of said water supply tank or standpipe or fixed derrick from the nearest street or streets and eight ~~(8)~~ radial views ~~at forty-five (at 45)~~ degrees of the site from a distance of ~~three hundred (300)~~ feet. Five sets of said photographs shall be submitted to the Board.

- f. A map showing all existing or proposed wireless communications facilities owned or operated by the applicant in the surrounding communities (Essex, Gloucester, and Manchester-by-the-Sea).
- g. The applicant shall submit radio coverage analysis maps for the proposed antenna height and a minimum of two additional radio analysis maps for lesser antenna heights agreed upon by the Board. The applicant shall also submit radio coverage analysis maps of all proposed or existing adjacent radio sites ~~(Added ATM March 21, 1998)~~.
- h. A report describing alternative sites examined in Rockport and the reasons for rejecting these alternative sites.
- i. The applicant shall arrange and pay for a stenographer to be present and record all hearings on its application and at the applicant's expense, provide the Board with a copy of the transcript of all hearings.

### **3.5 Design Guidelines**

The following guidelines shall be used when preparing plans for the siting and construction of wireless communication facilities:

- a. Except when located within an existing nonresidential building, wireless communications facilities shall be located a minimum of 300 feet from the nearest residential building.
- b. All towers shall be designed and constructed to the minimum height necessary to accommodate current and anticipated future use. The setback of a tower from the property line on the lot on which it is located shall be at least ~~one hundred and twenty-five (125)~~ percent of the height of the tower.
- c. No tower, including any antenna attached thereto, shall exceed 130 feet in height as measured from the ground level at the base of the tower. No tower shall be constructed which requires guy wires.
- d. All towers shall be painted, camouflaged or otherwise colored so they will, as much as possible, blend into the landscape or the structure where they are located. A different coloring scheme shall be used to blend the

structure below and above the tree line or building line.

- e. All wireless communications facilities shall be sited in a manner so that the view of the facility from the adjacent abutters, residential neighbors and other areas of the town shall be as limited as possible.
- f. Wireless communications facilities shall be designed to accommodate the maximum number of users technologically practical. The intent of this requirement is to reduce the number of facilities that will be required to be constructed in the Town.
- g. Fencing shall be provided to control access to the wireless communications facilities and shall be compatible with the scenic character of the Town and the neighborhood. There shall be no razor wire. Additional natural vegetative screening may be required by the Board.
- h. Accessory buildings and storage sheds shall not exceed one ~~(1)~~ story in height and shall be designed and sided to be consistent with the character of the neighborhood.
- i. There shall be no signs, except for announcement signs, no trespassing signs and a required sign giving the telephone number where the owner can be reached on a ~~twenty-four~~ 24 hour ~~a-a~~ day basis. All signs shall conform to the Rockport Sign ~~By-Law~~ By-law.
- j. Night lighting of towers shall be prohibited except when required by the FAA. Lighting shall be limited to that required for emergencies and/or as required by the FAA.
- k. There shall be a minimum of one parking space for each facility to be used in connection with the maintenance of the facility. Said parking space shall not be used for permanent storage of vehicles or other equipment.

#### **4.6. Establishment Of Wireless Communications Facilities In Existing Non-Residential Buildings**

Wireless Communication Facilities that can be completely enclosed in an existing public or private nonresidential building shall be allowed by Special ~~Use~~ Permit ~~("SUP")~~ in any zoning district. All components of the wireless communication facility, including the antenna, shall be enclosed within the existing public or private nonresidential building.

Where proposed antennas cannot be enclosed within the building:

- a. They shall be limited to a maximum length of ~~twelve (12)~~ feet. Antennas shall not extend more than ~~ten (10)~~ feet in height above the roof line of the building.
- b. Antennas on rooftops or above the structure shall be screened, constructed and/or painted to match the structure to which they are attached.

- c. Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.

All other wireless communication facilities shall be located in a Wireless Communications Facility Overlay District.

## 7. **Establishment Of Wireless Facility Overlay Districts Communication**

~~d.~~a. Wireless Communication Facility Overlay Districts ("WCFOD") are herein established. The WCFOD shall be considered superimposed on the other districts depicted on the Planning Board Zoning Map, Town of Rockport (The Zoning Map) and described in Section II, Establishment of Districts, of this ~~By-Law~~By-law. Any building, structure or use of land included in the WCFOD shall also be deemed to be within the particular underlying zoning district as shown on said Zoning Map and subject to all of the ~~By-Law~~By-laws and regulations thereof, except where expressly modified by Section ~~II.~~1.

~~e.~~b. When authorized by a Special Permit issued by the Board of Appeals wireless communications facilities may be permitted in a WCFOD.

~~f.~~c. The boundaries of the WCFOD shall be shown on a map entitled "Town of Rockport, Wireless Communication Facility Overlay District Map". The WCFOD Map is hereby made part of the Zoning ~~By-Law~~By-law and incorporated herein.

~~g.~~d. The following WCFOD districts are hereby created:

- i. South End Water Storage Tank (standpipe) off Thatcher Road, Rockport Assessors Map 28, Lot 81.
- ii. Rockport Department of Public Works yard off upper Main Street, Rockport Assessors Map 13, Lot 1.
- iii. Off Johnson's Road, Rockport Assessors Map 4, Lot 10 and the adjacent unnumbered Lot.

## ~~5.8.~~8. **Special Use Permit Review**

In addition to the requirements of Section ~~XIV.~~XIV. ~~Administration, C, 6. and 7.,~~  
~~and Section VI. L.~~ the Board shall consider the following objectives:

- a. A wireless communication facility which includes a tower shall be considered only after a finding that existing or previously approved towers or other buildings or structures cannot accommodate the proposed user.
- b. Application for an antenna proposed to be placed on an existing public or



private nonresidential building or structure shall be subject to design review to ensure compatibility with the scenic character of the Town and the neighborhood. The Board shall consider the visual impact of the antenna from the abutting neighborhood and streets, noise generated by the facility, impact on the aesthetic character of the neighborhood and the proximity to residential dwellings.

- c. The Board may impose such conditions on the Special ~~User~~ Permit as they deem necessary to carry out the purpose of this section.
- d. Any grant or denial of an application shall be in writing and supported by substantial evidence contained in the record.

## **K. MARIJUANA ESTABLISHMENTS, THE FOLLOWING: (~~Added ATM 4-7-2018~~)**

### **1. Medical Marijuana**

~~e.a.~~ The regulations for the sale and use of marijuana medically prescribed are described in MGL ~~c.Chapter~~ 55 (Act to Ensure the Safe Access to Marijuana), and ~~c.Chapter~~ 94I (Medical Use of Marijuana). Exceptions to these regulations for sale and use of marijuana in Rockport are provided in (b.) General Provisions, below.

#### ~~f.b.~~ General Provisions

- i. Medical Marijuana Treatment Centers (MMTC) are permitted by ~~special permit~~ Special Permit.
- ii. The sale of medical marijuana will be permitted only in the Downtown zoning district.
- iii. The sale of medical marijuana will be prohibited:
  - Within 500 ft of a school – public or private
  - Within 200 ft of a day-care center
- iv. The sale of medical marijuana will be permitted Monday – Saturday, 10-6 pm and Sunday 12-5 pm. Any change is by agreement with the Planning Board.
- v. No signage associated with an MMTC may use medical symbols, images of marijuana, related paraphernalia, or colloquial references to cannabis and marijuana. In addition, no graphics related to marijuana or paraphernalia may be used on the exterior of the MMTC or the building in which the MMTC is located.
- vi. All windows in a MMTC must be screened so as to prevent view of plants, products, and paraphernalia.
- vii. An MMTC must provide 24-hour security with remote electronic monitoring.



- viii. Unauthorized entry into an MMTC must be reported to the Rockport Police immediately upon detection.
- ix. The Planning Board is the Special Permit Granting Authority for medical marijuana.
- x. A non-refundable fee of \$500 prescribed by the Planning Board is to be submitted with the application to initiate the process for obtaining a Special Permit.

**2. Non-Medical Marijuana (~~Voted Local Election 5-15-2018~~)**

- a. Consistent with ~~G.L.~~MGL c.94G, ~~s.~~§3(a)(2), all types of non-medical marijuana establishments as defined in ~~G.L.~~MGL c.94G, ~~s.~~§1(j), to include marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana-related businesses, shall be prohibited within the Town of Rockport.

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## **L. WATER SUPPLY PROTECTION OVERLAY DISTRICT**

1. **Statement of Purpose.** Under the Massachusetts Drinking Water Regulations (310 CMR 22.00) municipal public water systems are required to protect drinking water sources from land uses and activities that have the potential to contaminate water supplies. Pursuant to the Massachusetts Department of Environmental Protection regulations, the Town of Rockport is required to adopt By-laws that comply with the Massachusetts Wellhead Protection Regulations [310 CMR 22.21(2)] and the Massachusetts Surface Water Supply Protection Regulations [310 CMR 22.20C(2)]. This Water Supply Protection Overlay District (“WSPOD”) By-law complies with the requirements of these Regulations and promotes the health, safety, and general welfare of the Town by ensuring an adequate quality and quantity of drinking water for the Town. The By-law preserves and protects existing and potential sources of drinking water, provides for the conservation of nature resources in the Town, and prevents temporary or permanent contamination of the environment.
2. **Effect on Existing Zoning.** The WSPOD overlays the underlying zoning but does not supersede the underlying zoning. If the underlying zoning is more restrictive of allowable uses than the WSPOD zoning, then the underlying zoning controls. If the WSPOD zoning is more restrictive of allowable uses than the underlying zoning, then the WSPOD zoning controls.
3. **Zones within the WSPOD**
  - a. **Zone I.** Zone I is the protective radius around a public well or wellfield. For public water supply wells producing 100,000 gallons per day or greater, the protective radius is 400 feet. Wellfields with approved yields of 10,000 gallons per day or greater require a 250-foot protective radius. Uses within the Zone I shall be limited to those land uses directly related to the provision of the public water system.
  - b. **Zone II.** Zone II is the delineated recharge area to a public drinking water well as approved by MassDEP and defined under the Massachusetts Drinking Water Regulations 310 CMR 22.00. Zone II is the area of an aquifer that contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at approved yield, with no recharge from precipitation). It is bounded by the groundwater divides that result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. Zone II extends upgradient to its point of intersection with

- prevailing hydrogeologic boundaries. Zone II shall include the entire Zone
- i. The boundaries of Zone II are depicted on the Town Zoning Map.
- c. **Zone A.** Lands in Zone A are the following:
- i. The land area between the Surface Water Source and the upper boundary of the Bank;
- ii. The land area within a 400 foot lateral distance from the upper boundary of the Bank of a Class A Surface Water Source, as defined in Massachusetts Regulation 314 CMR 4.05(3)(a): Class A; and
- iii. The land area within a 200 foot lateral distance from the upper boundary of the Bank of a Tributary or associated Surface Water body.
- iv. The Massachusetts Department of Environmental Protection (“DEP”) has delineated the Zone A for all existing public surface water supplies. Reference should be made to 310 CMR 22.20(C) for the definition and meaning of all capitalized terms used in this By-law relative to lands within Zone A. The boundaries of Zone A are depicted in the Appendix to this By-law and on the Town Zoning Map.
4. **Overlapping Zones.** Zone II and Zone A may overlap one another where a groundwater well is located near a surface water supply. In such overlapping zones, a use is prohibited if it is prohibited in either Zone II or Zone A. Moreover, if uses are allowed in either Zone, but only when performance standards are followed, the more restrictive performance standards applicable to either Zone shall be followed in both overlapping Zones.
5. **Boundaries of Water Supply Protection Overlay District.** Zones I, II, A, and any Overlapping Zones constitute the Water Supply Protection Overlay District. The WSPOD boundaries are delineated on the Town of Rockport Zoning Map on file with the office of the Town Clerk.
6. **Parcels Partially within the WSPOD.** Where the WSPOD divides a lot or parcel, the requirements established by the WSPOD shall apply to the entire lot or parcel.
7. **Extended “No-Build” and “No Disturb” Wetland Zones**
- a. In accordance with the Rockport Wetlands Protection By-law and Section X of the Wetland By-law Regulations, a Wetland located in whole or in part.
- b. Within either Zone II, Zone A, or an Overlapping Zone shall have a “No Build” Zone that is 100 feet measured horizontally landward of a Wetland and a “No-Disturb” Zone that is 50 feet measured horizontally landward

of a Wetland.

## **8. Prohibited Activities and Uses within Zone II**

a. The following activities and uses are prohibited in Zone II:

- i. landfills and open dumps, as defined in the Definitions section of 310 CMR 19.006;
- ii. landfills receiving only wastewater residuals and/or septage (wastewater residuals monofills) approved by the DEP pursuant to MGL c.21, s.26-53; MGL c.111, s.17, MGL c.83, s.6-7, and any regulations promulgated thereunder.
- iii. automobile graveyards and junkyard, as defined in MGL c.140B, s.1;
- iv. stockpiling and disposal of snow or ice removed from highways and streets located outside of Zone II that contains sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;
- v. petroleum, fuel oil and heating oil bulk stations and terminals including but not limited to those listed under Standard Industrial Classification (SIC) Codes 5171 (no including liquefied petroleum gas) and 5983. SIC Codes are established by the U.S. Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual;
- vi. treatment or disposal works subject to 314 CMR 5.00, Ground Water Discharge Permit Program for wastewater other than sanitary sewage. This prohibition includes but is not limited to treatment or disposal works related to activities under the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6) (Title 5), except the following:
  - the replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s); and
  - treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or (13); and
  - publicly owned treatment works, or POTWs .
- vii. facilities that generate, treat, store or dispose of hazardous waste that are subject to MGL c.21C and 310 CMR 30.000; Hazardous Waste, except for the following:
  - very small quantity generators, as defined by 310 CMR 30.00: Hazardous Waste;

- household hazardous waste collection centers or events operated pursuant to 310.390, Special Provisions for Accumulation of Household Hazardous Waste And/or Hazardous Waste Generated by Very Small Quantity Generators;
- waste oil retention facilities required by MGL c. 21, § 52A; and
- treatment works approved by the Department designed in accordance with 314 CMR 5.00, Ground Water Discharge Permit Program for the treatment of contaminated ground or surface waters.

~~xi~~<sup>viii</sup> any floor drainage systems in industrial or commercial hazardous material and/or hazardous waste process areas or storage areas, which discharge to the ground without a DEP permit or authorization. Any facility with such a drainage system shall be required to either seal the floor drain (in accordance with the state plumbing code, 248 CMR 10.00; *Uniform State Plumbing Code*), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies.

9. **Prohibited activities and uses within Zone II subject to performance standards.** The following uses and activities within Zone II are prohibited unless designed in accordance with the performance standards specified below.

- a. storage of sludge and septage, as defined in 310 CMR 32.05, Definitions, unless such storage is in compliance with 310 CMR 32.30, Requirements for Any Storage of Sludge or Septage and 32.31, Additional Requirements for Long-term Storage of Sludge or Septage;
- b. storage of sodium chloride, chemically treated abrasives or other chemicals used for the removal of ice and snow on roads, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- c. storage of commercial fertilizers, as defined in M.G.L. c.128, s.64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- d. storage of animal manures, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff and leachate;
- e. storage of liquid hazardous materials, as defined in MGL c.21E, and/or liquid petroleum products unless such storage is:
  - i. above ground level

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- whichever is greater. The storage requirements in this subparagraph do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in accordance with applicable state and local requirements.
- c. Treatment or disposal works subject to 314 CMR 3.00 *Surface Water Discharge Permit Program*, or 5.00, *Ground Water Discharge Permit Program*, except the following:
- i. The replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
  - ii. Treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in non-compliance with 310 CMR 15.000: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, provided the facility owner demonstrates to the Department's satisfaction that there are no feasible siting locations outside of the Zone A. Any such facility shall be permitted in accordance with 314 CMR 5.00: *Ground Water Discharge Permit Program* and shall be required to disinfect the effluent. The Department may also require the facility to provide a higher level of treatment prior to discharge;
  - iii. Treatment works approved by the Department designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or (13);
  - iv. Discharge by public water system of waters incidental to water treatment processes.
- d. All on-site subsurface sewage disposal systems, as defined in 310 CMR 15.000, *The State Environmental Code, Title 5, Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, within Zone A shall follow the requirements of 310 CMR 15.000.
- e. Within Zone A of all surface water supplies and tributaries as defined in 310 CMR 22.02, all sewer lines and appurtenances are prohibited except as required to eliminate existing or potential pollution to the water supply, or where the crossing of tributaries is necessary to construct a public sewer system. Where the exception is met, watertight construction of sewer lines and manholes shall be used.
- f. Within 1,000 feet of surface water supplies and tributaries, all pumping stations shall have standby power and high-water alarms telemetered to an appropriate location that is always manned. An emergency contingency plan must be developed by the owner of the wastewater treatment facility and submitted to the Department for approval.



- g. Beyond 1,000 feet, and within the watershed of surface water supplies, the Department may in specific circumstances, after review, require additional controls when deemed necessary for protection of public health.
- h. No stabling, hitching, standing, feeding, or grazing of livestock or other domestic animals shall be located, constructed, or maintained within 100 feet of the bank of a surface water source or tributary thereto. Owners and operators of agricultural operations should consult the Massachusetts Department of Agricultural Resources On-farm Strategies to Protect Water Quality - An Assessment & Planning Tool for Best Management Practices (December 1996) for information about technical and financial assistance programs related to erosion and sediment control and nutrient, pest, pesticide, manure, waste, grazing, and irrigation management.
- i. No burial shall be made, except by permission in writing by Department of Public Works in any cemetery or other place within 100 feet of the high-water mark of a source of public water supply or tributary thereto. No lands not under the control of cemetery authorities and used for cemetery purposes, from which lands the natural drainage flows into said source of water supply or tributary thereto, shall be taken or used for cemetery purposes until a plan and sufficient description of the lands is presented to the Department of Public Works and until such taking or use is expressly approved in writing by the Department of Public Works.
- j. No person, without written permission from the Department of Public Works, shall use any public water source for recreational purposes. Violations of this provision shall be subject to a civil fine of up to \$300. Nothing in this subsection shall prohibit the Department of Public Works or its agents from engaging in the maintenance or improvement of a public surface water supply.
- k. In addition to those used prohibited in section 10 above, the siting of the following new land uses within Zone A are prohibited:
- i. Facilities which through their acts or processes, generate, treat, store, or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.000: *Hazardous Waste*, except for the following:
    - very small quantity generators, as defined by 310 CMR 30.000: *Hazardous Waste*;
    - treatment works approved by the Department designed in accordance with 14 CMR 5:00: *Ground Water Discharge Permit Program for the treatment of contaminated ground or surface waters*;
  - ii. sand and gravel excavation operations;
  - iii. uncovered or uncontained storage of fertilizers;
  - iv. uncovered or uncontained storage of road or parking lot deicing and sanding materials;



- v. storage or disposal of snow or ice, removed from highways and streets outside the Zone A, that contains deicing chemicals;
- vi. uncovered or uncontained storage of manure;
- vii. junk and salvage operations;
- viii. motor vehicle repair operations;
- ix. cemeteries (human and animal) and mausoleums;
- x. solid waste combustion facilities or handling facilities as defined at 310 CMR 16:00: Site Assignment Regulations for Solid Waste Facilities;
- xi. land uses that result in the rendering impervious of more than 15%, or more than 20% with artificial recharge, or 2500 square feet of any lot, whichever is greater; and
- xii. commercial outdoor washing of vehicles, commercial car washes.

11. **Modifications to the WSPOD Boundaries.** The boundaries of the zones within the WSPOD shall not be changed unless:

- a. Prior to the proposed change, the DEP reviews and approves of the proposed change of the boundaries; and
- b. The boundary change is approved at Town Meeting.

12. **Enforcement.** The provisions of the WSPOD shall be enforced by the Building Inspector of the Town of Rockport. All remedies and penalties available for enforcement of the Zoning By-laws shall be applicable to the enforcement of the WSPOD.

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## **~~VIII~~.IX. COASTAL FLOOD PLAIN DISTRICT**

### **A. PURPOSES**

The purposes of this district are:

1. To provide that land in the Town of Rockport subject to seasonal or periodic flooding as described hereinafter shall not be used in such a manner as to endanger the health or safety of the occupants thereof, or of the public generally, or as to burden the public with cost resulting from unwise individual choices of land use.
2. To assure the continuation of the natural flow pattern of the of the water courses within the Town and to minimize the impact of coastal storms in order to protect persons and property against the hazards of flood inundation.

### **B. DISTRICT DELINEATIONS:**

1. "The Coastal Flood Plain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Rockport designated as Zone AE, AO, or VE on the Essex County Flood Insurance Rate Map ("FIRM" or "Map") issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Essex County FIRM that are wholly or partially within the Town of Rockport are panel numbers 25009C0309G, 25009C0317G, 25009C0319G, 25009C0328G, 25009C0336G, 25009C0337G, 25009C0338G, 25009C0339G, 25009C0476G and 25009C0500G dated July 16, 2014. The exact boundaries of the District are defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and Flood Insurance Study report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Inspector and Conservation Commission." ~~(amended ATM 4/9/2012 & 4/5/2014)~~
2. Notwithstanding the foregoing, areas determined by the Federal Insurance Administration to be out of the Flood Plain District or areas determined by the Building Inspector in accordance with the following subsection 3 to be not in fact. at or below Base Flood Elevation as shown on the "Map" shall be exempt from the Flood Plain District regulations.
3. In order that the Building Inspector may determine that the above mentioned conditions are met, for new construction of buildings, substantial improvements to or relocation of existing buildings, a site plan at a scale of 1"=10' prepared by a registered land surveyor or

registered professional civil engineer, shall be submitted in quadruplicate to the Building Inspector by the applicant.

The site plan shall show at least the following:

- a. The locations, boundaries, and dimensions of each lot.
- b. Two foot contours of the existing and proposed land structure.
- c. Location of existing and proposed structures, watercourses and drainage easements, means of access, drainage, and sewer disposal facilities.
- d. The area and location of existing or proposed leaching fields, if any.
- e. Show base flood elevation for the 100 year flood plain level as identified on the Flood Insurance Rate Map (FIRM) for Essex County. ~~(amended ATM 4/9/2012)~~

The Building Inspector shall, within ~~5~~five days after receipt of said site plan, transmit one copy of said plan to the Planning Board, Board of Health and Conservation Commission. Said boards and commissions may, at their discretion, investigate the case and report in writing their recommendation to the Building Inspector. The Building Inspector shall not take final action on such plans until it has received a report thereon from said boards and commissions, or until said boards and commissions have allowed ~~twenty~~(20) days to elapse after receipt of such plan without a submission or report thereon.

### C. USE REGULATIONS

1. The Coastal Flood Plain District shall be considered as overlying all other districts.
2. In the Coastal Flood Plain District land and structures thereon may be used in accordance with the provisions of this section for any purposes otherwise allowed for the underlying district in which such land or structure is situated.
3. In the Floodplain District no new construction of buildings, nor substantial improvements to or relocation of existing buildings shall be undertaken except as provided in Subsection 4 hereof.  
“Substantial improvements” as used in this Section ~~IX~~VIII is any repair, reconstruction or improvement of a main structure on the property, the cost of which equals or exceeds 50% of the actual cash value of the structure either before the improvement is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition substantial improvements are considered to occur when the first alteration of

any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. The term does not, however, include either: ~~(Amended FTM 9-17-2018)~~

- a. Any alteration to comply with existing state or local health sanitary building or safety codes or regulations or;
  - b. Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.
4. The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged, provided they are permitted in the underlying district and they do not require structures, fill or storage of materials or equipment.
- a. Public rights of way may be filled for the purpose of maintenance or improvement of an existing roadway or right of way.
  - b. When public buildings and structures belonging to the Town of Rockport are to be improved or rebuilt, fill may be utilized to the extent allowed by the safety standards set by the Federal Insurance Administration.
  - c. Outdoor recreation, including play areas, nature study, boating, fishing and golf courses where otherwise legally permitted.
  - d. Foot, bicycle, and/or horse paths and bridges, provided such uses do not affect the natural flow pattern of any water course.
  - e. Uses such as farming, gardening, bathing beaches or picnic areas.
  - f. Boat docks and launching ramps, subject to the approval of state and/or federal agencies, if required.
  - g. Construction of a public roadway approved by Town Meeting vote.
  - h. Wildlife management areas and conservation of water, plants and wildlife.
  - i. Garages within the "A" zone as shown on the Map and driveways accessory to dwellings.
  - j. Any repair, reconstruction or improvements to buildings lawfully existing prior to the adoption of these provisions, which repair, reconstruction or improvements do not constitute substantial improvements as defined herein.

#### **D. DEVELOPMENT REGULATIONS**

~~1.~~ **Compliance with State Regulations** ~~(amended ATM 4/9/2012).~~  
~~2.~~

~~3.1.~~ All development in the district including structural and nonstructural activities whether permitted by right or by ~~special permit~~ Special Permit must be in compliance with the following regulations as may be amended from time to time:

- a. ~~s~~Sections of the Massachusetts Building Code (780 CMR) which address flood plain and coastal high hazard areas
- b. Wetlands Protection Regulations, Department of Environment Protection (DEP) (currently 310 CMR 10.00)
- c. Inland Wetland Restriction, DEP (currently 310 CMR 13.00)
- d. Coastal Wetland Restriction, DEP (currently 310 CMR 12.00)
- e. Minimum requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5)
- f. All development, including structural and nonstructural activities, whether permitted by right or by ~~special permit~~ Special Permit must be in compliance with M.G.L. Chapter 131 Section 40.

Any variances from the provisions of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations and 44CFR 60.6.

**E. OTHER USE REGULATIONS** ~~(amended ATM 4/9/2012)~~

1. Within zone AO on the FIRM, require adequate drainage paths around structures on slopes, to guide flood waters around and away from proposed structures.
2. Prohibit man-made alteration of sand dunes within Zone VE which would increase potential flood damage.
3. Provide that all new construction within Zone VE be located landward of the reach of ~~mean-high-tide~~ the coastal bank.
4. Review all subdivision proposals to assure that: a) such proposals minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.

## **~~F. BOARD OF APPEALS~~**

- ~~0. In the coastal Flood Plain District, the Board of Appeals may grant a special permit for new construction or substantial improvements to structures to be erected on a lot of one-half acre or less in size, contiguous to and surrounded on all sides by lots with existing structures constructed below the Base Flood Elevation in accordance with variance requirements set forth in 44 CFR 60.6~~
- ~~1. The Town shall include, within its Annual Report submitted to the flood Insurance Administration, the number of permits issued hereunder, and shall maintain a record of all permits granted, including justification for their issuance.~~
- ~~0. The granting of a spec hereunder shall not affect or grant relief from the provisions of this zoning by law relating to the underlying district in which the land lies.~~

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## **~~XI.~~X. LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS (~~Added ATM 4-2-2016~~)**

### **A. PURPOSE**

The purpose of this section is to promote the creation of new large-scale ground-mounted solar photovoltaic installations (“LSGMSPVI”) (250 kW or greater) by establishing standards for the placement, design, construction, operation, monitoring, modification, repair, and removal of such installations to ensure public safety, minimize impacts on scenic, natural and historic resources, and provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the placement, design, construction, operation, monitoring, modification and/or repair and removal of large-scale ground-mounted solar photovoltaic installations.

### **B. APPLICABILITY**

This section applies to the initial construction of LSGMSPVIs and to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

Smaller scale building mounted solar or photovoltaic installation which are accessory to a lawful principal use on the same lot are not otherwise subject to the requirement of this section but must comply with the other provisions of the Zoning ~~By-Law~~By-law as applicable.

### **~~C. DEFINITIONS~~**

#### **~~D. —~~**

**~~E. Large-Scale Ground-Mounted Solar Photovoltaic Installation (LSGMSPVI): A solar photovoltaic system that is structurally mounted on the ground, not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.~~**

#### **~~F. —~~**

**~~G. On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.~~**

#### **~~H. —~~**

**~~I. Rated Nameplate Capacity: The maximum rated output of Direct Current (DC) electric power production of the photovoltaic system.~~**

#### **~~J. —~~**

**~~K. Site Plan Review: Review by the Planning Board to determine conformance~~**

~~with the Zoning By-Law, as provided in Section X of the By-Law.~~

~~L.~~

**~~M.C.~~ GENERAL REQUIREMENTS ~~REQUIREMENTS~~ FOR ALL ~~L~~  
LARGE-SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC  
INSTALLATIONS**

The following requirements are common to all LSGMSPVIs to be sited in designated locations.

**~~1.~~ Compliance with Laws, Ordinances and Regulations.**

~~2.~~1. The construction and operation of all LSGMSPVIs shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, environmental, Wetlands Protection Act, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the state Building Code.

**~~3.~~ Building Permit and Building Inspection.**

~~4.~~2. No LSGMSPVI shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

**~~5.~~ Fees.**

~~6.~~3. The application for a building permit for a LSGMSPVI must be accompanied by the fee required for a building permit.

**~~7.~~ Site Plan Review.**

~~8.~~4. Any LSGMSPVI shall undergo site plan review by the Planning Board prior to construction, installation or modification as provided in this section. LSGMSPVIs shall be constructed, installed, used and modified in conformity with a site plan approved by the Planning Board in accordance with Section XIII Site Plan Review ~~of the Zoning By-Law~~By-law and the further requirements set forth herein. The Planning Board shall review and act upon the site plan review of an LSGMSPVI within 90 days of its receipt of an application determined to be complete. The requirements set forth herein shall be applied coincident with and in addition to those requirements set forth in Section XIII. The requirements of this section shall take precedence in the event of a direct conflict.

**~~a.~~ General.**

~~b.~~a. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts.

**~~e.~~ Required Documents.**

~~f.~~b. Pursuant to the site plan review process, the project proponent shall provide the following documents:



i. A site plan showing:

- Property lines and physical features, including roads, for the project site;
- Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation and structures;
- Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
- One or three line electrical diagrams detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices;
- Documentation of the major system components to be used, including the PV panels, mounting systems, and inverters;
- Name, address, and contact information for proposed system installer;
- Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- Name, contact information and signature of any agents representing the project proponent; and,
- A description of how land clearing and construction shall be performed in accordance with the appropriate sections of the Zoning ~~By-Law~~By-law governing storm water discharge, land disturbance, provisions for handling toxic or hazardous materials, and post-construction storm water runoff.

- ii. Documentation of actual or prospective access and control of the project site (see Section ~~D.e~~X.C.6);
- iii. An operation and maintenance plan (see Section ~~D.f~~X.C.7);
- iv. Zoning district designation for the parcel of land comprising the project site (submission of a copy of a zoning map with the parcel identified is suitable for this purpose);
- v. Proof of liability insurance written by companies licensed to provide such insurance in Massachusetts and with coverage limits at commercially acceptable levels;

- vi. Description of financial surety that satisfies Section ~~D.m.ii~~[H.C.14](#). The project proponents shall submit a fully inclusive estimate of the costs associated with removal of the proposed facility prepared by a licensed engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.
- vii. A public outreach plan, including a project development timeline, which indicates how the project proponent will meet the required site plan review notification procedures and otherwise inform abutters and the community.

The Planning Board may require additional information, data or evidence as it deems necessary pursuant to the Site Plan Review process, or may waive documentation requirements as it deems appropriate.

~~9.~~**Professional Review.**

~~10.5.~~[5.](#) The Planning Board may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the Planning Board with its review of the application in accordance with the requirements of [MGL c.44, s.53G](#)~~Section 53G of Chapter 44 of the Massachusetts General Laws~~. The Planning Board may direct the applicant to deposit funds with the Planning Board at the time the application is accepted, and to add additional funds as needed upon notice. Failure to comply with this section shall be grounds for denying the application. Upon approval of the application, any excess amount in the account attributable to that project, including any accrued interest, shall be repaid to the applicant.

~~11.~~**Site Control.**

~~12.6.~~[6.](#) The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed LSGMSPVI.

~~13.~~**Operation & Maintenance Plan.**

~~14.7.~~[7.](#) The project proponent shall submit a plan for the operation and maintenance of the LSGMSPVI, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

~~15.~~**Utility Notification.**

~~16.8.~~[8.](#) No LSGMSPVI shall be constructed until evidence has been given to the Building Inspector that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this~~-~~ requirement.

~~17.9.~~[9.](#) **Dimension and Density Requirements**

~~a.~~ **Setbacks.**

~~b.~~a. An LSGMSPVI shall be set back from property lines consistent with the applicable regulations for the underlying zoning district, with the exception of necessary interconnections with utility transmission or distribution facilities.

~~e.~~ **Appurtenant or Accessory Structures.**

~~d.~~b. All appurtenant or accessory structures to a LSGMSPVI shall be subject to the requirements of the Zoning ~~By-Law~~By-law concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other, and shall be landscaped and screened from view by vegetation, located underground, or behind berms, and/or clustered to minimize visual impacts.

~~18.~~10. **Design Standards**

~~a.~~ **Lighting.**

~~b.~~a. Lighting of LSGMSPVIs shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the LSGMSPVI shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

~~e.~~ **Signage.**

b. Signs on LSGMSPVIs shall comply with requirements of all applicable sign regulations and shall be limited to:

- i. Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
- ii. Educational signs providing information about the LSGMSPVI and the benefits of renewable energy. LSGMSPVIs shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic ~~installation~~.

~~d.~~ **Utility Connections.**

~~e.~~c. Reasonable efforts, as determined by the Planning Board, shall be made to place all utility connections from the LSGMSPVI underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

~~f.~~ **Screening.**

~~g.d.~~ A buffer or green strip planted with live shrubs or trees, predominantly evergreen, shall if feasible be maintained between the perimeter of the LSGMSPVI and any abutting property line or street unless the existing natural growth is adequate to provide an equivalent buffer. Such a buffer shall be designed so as not to create a hazard upon entrance or exit from the facility. The Planning Board may vary or waive this requirement consistent with minimizing negative effects on abutting property.

~~19.11.~~ **Safety and Environmental Standards**

~~a.~~ **Emergency Services.**

~~b.a.~~ The LSGMSPVI owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Department. Upon request the owner and/or operator shall cooperate with Town emergency services in developing an emergency response plan, which may include ensuring that emergency personnel have 24-hour access to the facility. All means of shutting down the LSGMSPVI shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the LSGMSPVI.

~~e.~~ **Land Clearing.**

~~d.b.~~ Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the LSGMSPVI or otherwise prescribed by applicable laws, regulations, and ~~bylaw~~ By-laws.

Significant tree cutting is strongly discouraged. Should tree cutting be required the applicant should offset the loss of trees by planting an equivalent number of trees of similar species of (size and caliper) on-site or on an area specified by the Planning Board.

~~e.~~ **Drainage and Groundwater Protection.**

~~f.c.~~ A LSGMSPVI shall comply with any drainage and groundwater requirements set forth in the Zoning ~~By-Law~~ By-law, which requirements shall be imposed and conditioned as appropriate through the Site Plan Review process.

~~20.12.~~ **Monitoring and Maintenance**

~~a.~~ **Solar Photovoltaic Installation Conditions.**

~~b.a.~~ The LSGMSPVI owner and/or operator shall maintain the facility in good and safe working condition, and shall schedule inspection by a competent professional at least once every ~~twelve (12)~~ months or more often, pursuant to industry standards and practices. The results of the inspection and any resulting repair work shall be submitted to the Planning Board and the Building Inspector within ~~thirty (30)~~ days of receipt by the owner and/or operator. Maintenance shall include,

but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Department and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the LSGMSPVI and any access road(s), unless accepted as a public way.

~~e.~~ **Modifications.**

~~d.b.~~ All material modifications to a LSGMSPVI, after issuance of the required building permit, shall require further Site Plan Review by the Planning Board.

~~e.~~ **Contact.**

~~f.c.~~ The owner and/or operator of a LSGMSPVI shall identify a responsible person for emergency purposes and public inquiry and shall at all times throughout the life of the of the installation maintain current contact information (name, address, telephone number and e-mail address) for such person(s) on file with the Building Inspector, the Fire Department, and the Planning Board.

~~21.~~ **Insurance.**

~~22.~~ 13. Prior to commencing operation, the owner or operator of a LSGMSPVI shall provide the Town Clerk with a certificate of insurance showing that the property has a minimum of one million dollars (\$1,000,000) in liability coverage by occurrence in the aggregate or five million dollars (\$5,000,000) general liability insurance, and that the Town is an additional named insured thereon. Such certificate shall be supplied on an annual basis to the Town upon the renewal of said insurance policy.

~~23.~~ 14. **Discontinuance or Decommissioning**

~~a.~~ **Removal Requirements.**

~~b.a.~~ Any LSGMSPVI or substantial part thereof not in operation for a period of ~~one hundred eighty (180)~~ continuous days or more without written permission from the Planning Board or that has reached the end of its useful life shall be considered discontinued and shall be removed. Upon written request from the Building Inspector, addressed to the contact address provided and maintained by the owner and/or operator as required above, the owner/and or operator shall provide evidence to the Building Inspector demonstrating continued use of a LSGMSPVI. Failure to provide evidence within ~~thirty (30)~~ days of such written request shall be conclusive evidence that the installation has been discontinued. The owner and/or of the installation shall notify the Planning Board and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.

The owner or operator shall physically remove the installation no more than 150 days after the notification date of discontinued operations.

Decommissioning shall consist of:

- i. Removal from the site of the LSGMSPVI in its entirety, including all associated structures, equipment, security barriers and transmission/distribution lines.
- ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations
- iii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner and/or operator to leave landscaping or designated below grade foundations in order to minimize erosion and disruption to vegetation.
- iv. Reinstatement of gravel or ground cover consistent with the surrounding landscape.
- v. Removal of all above ground foundations and supports to a depth of one foot below existing grade.

If the owner and/or operator of the LSGMSPVI fails to remove the installation in accordance with the requirements of this section, the Town shall have the right, to the extent it is otherwise duly authorized by law, to enter the property and remove the installation at the expense of the owner and/or operator of the installation and the owners of the site on which the facility is located.

#### ~~24.~~ **Financial Surety.**

~~25.~~ 15. The owner of a LSGMSPVI approved in accordance with this ~~By-Law~~ By-law shall provide to the Town, acting through the Planning Board, a form of surety to cover the cost of removal in the event the Town must remove the LSGMSPVI and remediate the landscape. Such surety shall be in an amount and form determined to be reasonable by the Planning Board, which may be an escrow account, bond, or otherwise, and shall be provided prior to construction. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. Such surety shall remain in force for so long as the project is in existence, and the owner shall annually provide the Planning Board and Building Inspector with proof that the surety continues in effect. Lapse of surety shall be a violation of this ~~By-Law~~ By-law and the Town may take appropriate enforcement action. Surety will not be required for municipal or state-owned facilities.

### ~~N.D.~~ **ESTABLISHMENT OF LSGMSPVI OVERLAY DISTRICT**

The LSGMSPVI Overlay District is hereby established. The boundaries of the LSGMSPVI Overlay District are shown on a map entitled “LSGMSPVI Overlay District,” which is hereby incorporated in the Town Zoning Map. The LSGMSPVI Overlay District shall be considered superimposed on the other districts depicted on the Town Zoning Map.

LSGMSPVIs are allowed as of right in the LSGMSPVI Overlay District. The provisions and requirements of the underlying zoning districts remain in effect, in all other respects.

**~~Q.~~E. SEVERABILITY**

If any provision of this Section is invalidated, such invalidation shall not invalidate any other provision.”

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## ~~XII~~XI. OPEN SPACE RESIDENTIAL DEVELOPMENT

### A. PURPOSE AND INTENT

1. The primary purposes for Open Space Residential Development (OSRD) are the following:
  - a. To allow for greater flexibility and creativity in the design of residential developments;
  - b. To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, and wetlands, and historical and archeological resources, in a manner that is consistent with the Town of Rockport Community Development Plan; Town of Rockport Watershed Protection Plan and Town of Rockport Open Space and Recreation Plan;
  - c. To encourage a less sprawling, more efficient and compact form of development that disturbs less open land and natural materials and conforms to existing topography and natural features better than a conventional or grid subdivision;
  - d. To minimize the total amount of disturbance on the site;
  - e. To further the goals and policies of the Town of Rockport Community Development Plan, Town of Rockport Watershed Protection Plan and Town of Rockport Open Space and Recreation Plan; as amended from time to time;
  - f. To facilitate the construction and maintenance of housing, streets, utilities, and public services in a more economic and efficient manner, that are in harmony with the architectural heritage of the Town of Rockport; and
  - g. To promote affordable housing and a more diversified housing stock.

### B. APPLICABILITY

1. Land Area: The proponent of any proposed residential development within the zoning district(s) specified in Section 2(b) that is on a parcel of five (5) acres or more or on contiguous parcels totaling five (5) acres or more shall submit a ~~special permit~~Special Permit application to the Planning Board for an OSRD in accordance with the provisions of this Section, which shall include an OSRD Special Permit Plan as described below. The applicant may also submit a Preliminary Subdivision Plan at the same time pursuant to the Rules and Regulations Governing the Subdivision of Land in the Town of Rockport, as amended (hereinafter "the Subdivision Rules and Regulations"). The Planning Board shall, in compliance with Massachusetts General Laws c. 40A, s. 9, hold a public hearing on the OSRD application. For subdivisions on less than five (5) acres, an applicant may submit, but shall not be required to submit, a ~~special permit~~Special Permit application



for an OSRD. Any ~~special-permit~~Special Permit application submitted under the provisions of this Subsection that involves the subdivision of land shall also be subject to the approval of the Planning Board under the Subdivision Rules and Regulations.

2. Zoning Classification: Only those tracts located in the SRAA Zoning District shall be eligible for consideration as an OSRD.
3. Contiguous Parcels: To be eligible for consideration as an OSRD, the total tract shall consist of one parcel of land or set of contiguous parcels.
4. Land Division: To be eligible for consideration as an OSRD, the propose OSRD must involve either (i) a subdivision, or (ii) a division of land pursuant to Massachusetts General Laws c 41, s. 81P.

#### C. SPECIAL PERMIT REQUIRED

The Planning Board may authorize an OSRD pursuant to the grant of a ~~special-permit~~Special Permit. Notwithstanding the provisions of Section XI.C.3 of the Zoning By-law to the contrary, the Planning Board will act as the ~~special-permit~~Special Permit granting authority for all OSRD applications.

#### D. PRE-APPLICATION CONFERENCE

The applicant for an OSRD shall attend a pre-application conference with the Planning Board at a regular business meeting of the Planning Board. The Planning Board shall invite a representative of the Conservation Commission, Board of Health, Department of Public Works, Watershed Protection Committee and the Rights-of-Way Committee to such conference. The purpose of a pre-application conference is to attempt to streamline the formal application process, to minimize the applicant's costs of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage in the development. At the pre-application conference the applicant may outline the

proposed OSRD and the yield based on a conventional subdivision buildout, seek preliminary feedback from the Planning Board and/or its technical experts, and set a timetable for submittal of a formal application. At the consent and expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSRD ~~special-permit~~Special Permit.

#### E. DESIGN PROCESS

1. At the time of the application for a ~~special-permit~~Special Permit for an OSRD in conformance with Subsection F below, applicants are required to demonstrate to the Planning Board that the following four-step design process was performed by a certified landscape architect, or by a multi-disciplinary team of which one member must be a certified landscape

architect (Qualified Design Team), and considered in determining the layout of proposed streets, house lots, and open space.

- a. Step One: Identifying Conservation Areas and the Potentially Developable Area. The certified landscape architect or Qualified Design Team shall first identify and delineate two categories of conservation areas at the site, as follows: (1) Primary Conservation Areas, consisting of those areas protected by federal, state or local laws, including but not limited to wetland resource areas, vernal pools, Outstanding Resource Waters, rare species habitat, flood hazard areas, and floodplains; and (2) Secondary Conservation Areas, consisting of those elements of the natural landscape that are not protected fully by law, but the maintenance of which in their natural state would provide environmental, aesthetic or other value to the environment or community, such as steep slopes (typically greater than twenty-five percent) mature woodlands, vernal pool species upland habitat, wetland buffer zones, existing trails and footpaths, farmland, large open meadows, stone walls, unique geological formations, critical wildlife habitats and important cultural features such as historic and archeological sites and scenic views. Land outside identified Primary and Secondary Conservation Areas is Potentially Developable Area (hereinafter "PDA"). The certified landscape architect or Qualified Design Team shall then delineate the PDA. Development shall be located exclusively within the PDA to the maximum extent feasible.
- b. Step Two: Locating House Sites. The certified landscape architect or Qualified Design Team shall then locate the approximate sites of individual structures within the PDA and delineate the private yards and shared amenities, so as to reflect an integrated neighborhood that conforms with the existing topography and natural features, with emphasis on consistency with the Town's historical development patterns and heritage.
- c. Step Three: Aligning the Streets and Trails. The certified landscape architect or Qualified Design Team shall then align streets to access the house lots or units and layout sidewalks and walking trails to create internal and external connections to existing and/or potential future streets, sidewalks, and trails.
- d. Step Four: Lot Lines. If applicable the certified landscape architect or Qualified Design Team shall then delineate the lot lines according to Subdivision H below.

## F. PROCEDURES

1. An application for a ~~special permit~~ [Special Permit](#) for an OSRD, or for an amendment thereto, shall include, among other supporting information, an OSRD Special Permit Plan. The OSRD Special Permit Plan submittal shall consist of a Sketch Plan and a Conventional Subdivision Yield Plan as follows:

- a. Sketch Plan. The Sketch Plan shall be prepared by a certified landscape architect or Qualified Design Team, and shall identify the Primary Conservation Areas, Secondary Conservation Areas, general features of the land, approximate configurations of the lots, open space, and roadways, and shall also include the information listed in the Subdivision Rules and Regulations to the extent applicable. The proposed development as identified on the Sketch Plan shall reflect and incorporate the Four-Step Design Process set forth in Subsection 5 above, and the design standards set forth in Subsection 10 below.
  - b. Conventional Subdivision Yield Plan. The Conventional Subdivision Yield Plan shall depict the basic number of lots/dwelling units as described in Subsection G below.
2. Whenever an application for an OSRD ~~special permit~~ Special Permit or amendment thereto is filed with the Planning Board, the applicant shall also file, within five (5) working days of the filing of the completed application, copies of the application, including the accompanying OSRD Special Permit Plan and other documentation, to the Board of Health, Conservation Commission, Building Inspector, Department of Public Works, Watershed Protection Committee, Rights-of-Way Committee, Police Chief, and Fire Chief for their consideration, review, and report.
3. The Planning Board shall, in compliance with Massachusetts General Laws c. 40A, s. 9, hold a public hearing on the OSRD application for a ~~special permit~~ Special Permit. Notice and the publication and giving of notice for such public hearing and the procedural requirements for such public hearings shall be those set forth in said M.G.L. c. 40A, s. 9, as amended, which is incorporated herein by reference. The applicant may also submit a Preliminary Subdivision Plan at the same time as his/her application for an OSRD ~~special permit~~ Special Permit pursuant to the provisions of the Subdivision Rules and Regulations. In the event both an OSRD Special Permit Plan and a Preliminary Subdivision Plan are submitted, (i) the Planning Board shall hold concurrent public hearings on both plans, (ii) the Planning Board shall, prior to the close of the public hearing, determine which plan it considers most beneficial to the Town, and (iii) the applicant shall, prior to the close of the public hearing, elect and advise the Board in writing which plan he or she wishes to pursue.
4. Whether or not conducted during the pre-application stage, the Planning Board may conduct a site visit during the public hearing process. At the site visit, the Planning Board and/or its agents shall be accompanied by the applicant and/or his or her agents if requested by the applicant.
  - a. The Planning Board may adopt fees for the employment of outside technical experts, at the applicant's expense, as reasonably necessary in connection with its review of the applicant's proposed plan(s) or technical reports in accordance with the provisions of Massachusetts General Laws

- c. 44, s. 53G.
  - b. The procedural and substantive ~~special-permit~~ Special Permit requirements set forth in this Section of the Zoning By-law shall be in addition to any other requirements of the Subdivision Rules and Regulations and other provisions of the Zoning By-law; with the exception, however, that the applicant is not required to comply with Section VI. K entitled, "Housing Balance" of the Zoning By-law.
  - c. Relationship between the OSRD Special Permit Plan and OSRD Definitive Subdivision Plan.
5. The OSRD Special Permit Plan replaces the Preliminary Subdivision Plan and authorizes the applicant to submit an OSRD Definitive Subdivision Plan to the Planning Board for approval under the Subdivision Rules and Regulations. All ~~special-permit~~ Special Permits issued by the Planning Board shall, by virtue of this provision, include a condition that any subsequent OSRD Definitive Subdivision Plan shall substantially comply with the approved OSRD Special Permit Plan and ~~special-permit~~ Special Permit conditions.
- a. An OSRD Definitive Subdivision Plan shall be considered not to substantially comply with the OSRD Special Permit Plan if the Planning Board determines that any of the following changes exist:
    - (1) An increase in the number of building lots or dwelling units;
    - (2) A significant decrease in the open space acreage or configuration;
    - (3) A significant change in the lot or road layout or unit placement;
    - (4) A significant change in the general development pattern, which is contrary to or inconsistent with the primary purposes of an OSRD, as specified in Subsection 1 above;
    - (5) A significant change to the storm water management facilities; and/or
    - (6) A significant change in the wastewater management systems.
  - b. If the Planning Board determines that the OSRD Definitive Subdivision Plan does not substantially comply with the OSRD Special Permit Plan ~~special-permit~~ Special Permit conditions, the Board may disapprove the OSRD Definitive Subdivision Plan.
  - c. The Planning Board may conditionally approve an OSRD Definitive Subdivision Plan that does not substantially comply with the approved OSRD Special Permit Plan or ~~special-permit~~ Special Permit conditions. However, such conditional approval must identify where the plan does not substantially comply with the OSRD Special Permit Plan or ~~special-permit~~ Special Permit conditions and shall be conditional upon the applicant applying for, and the Planning Board granting, an amendment to the ~~special-permit~~ Special Permit such that the OSRD Special Permit Plan and ~~special-permit~~ Special Permit conditions are consistent with the significant changes identified by the Planning Board. The conditional approval shall also require that the applicant file its application for an

amendment to the ~~special permit~~Special Permit within a specified time period.

- d. The public hearing on the application for an amendment to the ~~special permit~~Special Permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the OSRD Definitive Subdivision Plan. The Planning Board may only review and grant an amendment to the ~~special permit~~Special Permit.

#### **G. CONVENTIONAL SUBDIVISION YIELD PLAN - BASIC MAXIMUM NUMBER OF LOTS/DWELLING UNITS**

Determination of Yield. The basic maximum number of lots, as described herein, shall be derived from and delineated on a Conventional Subdivision Yield Plan (hereinafter referred to as "Basic Maximum Number"). For the determination of yield, the Conventional Subdivision Yield Plan shall show the maximum number of lots that could be placed upon the site under a conventional subdivision process according to the Subdivision Rules and Regulations and all applicable requirements of the Rockport Zoning By-law. The proponent shall have the burden of proof with regard to the Basic Maximum Number of lots. The Planning Board shall request further information related to the proposed yield, including but not limited to an approved wetland and resource delineation (Abbreviated Notice of Resource Area Delineation), soil tests and percolation tests if applicable. The determination of yield shall set the amount of lots or dwelling units submitted in the Sketch Plan, not including increased units allowed under Subsection 12 below.

#### **H. REDUCTION OF DIMENSIONAL REQUIREMENTS**

1. The Planning Board encourages applicants to modify lot size, shape, and other dimensional requirements for lots within an OSRD, subject to the following limitations:
  - a. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the OSRD; provided, however, that the Planning Board may waive this limitation to the extent it determines that such waivers will substantially further the purposes and intent of this by-law.
  - b. At least 50% of each required setback for the applicable zoning district shall be maintained in the OSRD except for lots bordering lands outside the development, in which case each required setback shall be the same as in the applicable zoning district.
  - c. Minimum lot size shall be ten thousand (10,000) square feet; provided, however, that the Planning Board may reduce this minimum lot size to the extent it determines that such reduction(s) will substantially further the purposes and intent of this by-law.
  - d. Building coverage on each individual lot shall be no greater than 25%; provided, however, that the Planning Board may increase this maximum

building coverage if it determines that the design of the development overall protects an amount of open space and important resources that will substantially further the purposes and intent of this by-law.

## **I. OPEN SPACE REQUIREMENTS**

### **1. Open Space Requirements.**

- a. A minimum of fifty percent (50%) of the tract shown on the development plan shall be open space delineated as a separate lot or lots, and must be preserved as such in perpetuity in accordance with this Subsection.
- b. At least fifty percent (50%) of the total uplands on the site shall be included in the open space set aside under Subsection 9(a)(i). Uplands shall not include wetland buffer zones or Riverfront Area as defined by the Massachusetts Wetlands Protection Act, M.G.L. c. 131, s. 40, and regulations adopted thereunder, as amended. The Planning Board may allow a reduction of this upland ratio if it furthers the purposes and intent of this by-law.
- c. The open space shall be connected. At the discretion of the Planning Board, open space may still be considered connected if it is separated by a trail or narrow roadway.
- d. The open space shall be suitable for and protected and maintained for wildlife habitat, conservation, historic preservation (landscapes and/or structures), outdoor education, passive outdoor recreation, park purposes, agriculture, horticulture, forestry, and/or a combination of these uses. Buildings of any kind, and paths and walkways which are paved with tar, concrete or any other impermeable surface shall not constitute open space. Parking areas and areas used for vehicular access or egress shall not constitute open space.

At the discretion of the Planning Board subsurface wastewater and stormwater management systems serving the OSRD may be located within the open space. Surface systems, such as retention and detention ponds, shall not qualify towards the minimum open space required unless these systems are determined by the Planning Board to be "soft" (nonstructural), natural-like, low-impact stormwater management systems that do not create impervious surfaces, that enable infiltration and that are otherwise compatible with the contemplated uses of adjacent open space.

- e. The open space shall either be subject to a recorded conservation restriction enforceable by the Town providing that such land shall be perpetually kept in an open state, preserved exclusively for the purposes set forth herein, and maintained in a manner which will ensure its suitability for its intended purposes, or, at the Planning Board's election, shall be conveyed to one or more of the following:

(1) The Town or its Conservation Commission; and/or

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- (2) A non-profit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above; and/or
  - (3) A corporation or trust owned jointly or in common by the owners of lots within the OSRD. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust that shall provide for mandatory assessments for maintenance expenses to each lot. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.
  - (4) In any case where the open space is not conveyed to the Town or its Conservation Commission or subject to a recordable conservation restriction, a restriction enforceable by the Town shall be recorded providing that such land shall be kept in an open state and preserved exclusively for the purpose set forth herein.
- f. In order to maintain and protect the open space, the Planning Board may request a reasonable endowment from the applicant for the care and custody of the open space in the event the open space is conveyed to an entity set forth in I.1.e. 2 or 3 above. The amount of the endowment shall be proportional to the open space area and amount of public use and shall be a one-time payment, the terms of which shall be conditioned in the ~~special permit~~ [Special Permit](#) decision.

## J. DESIGN STANDARDS

The Town of Rockport Planning Board may issue Rules and Regulations that govern Generic and Site Specific Design Standards relative to the development and design process. These design standards shall include but not be limited to: tree and soil removal, streets, landscaping, mix of housing types, parking, buffer areas, drainage, screening, low-impact development techniques, and trails.

## K. DECISION OF THE PLANNING BOARD

1. The Planning Board may grant a ~~special permit~~ [Special Permit](#) for an OSRD if it determines that the proposed OSRD has less detrimental impact on the tract and advances further the interests of the community than a conventional development proposed for the tract, after considering the following factors:
  - a. Whether the OSRD achieves greater flexibility and creativity in the design of residential developments than a conventional plan;
  - b. Whether the OSRD promotes permanent preservation of open space,

agricultural land, forestry land, wildlife and rare species habitat, other natural resources and features, including aquifers, water bodies, and wetlands, and historical and archeological resources in a manner that is consistent with the Town of Rockport Community Development Plan, Town of Rockport Watershed Protection Plan and Town of Rockport Open Space and Recreation Plan;

- c. Whether the OSRD promotes a less sprawling, less land consumptive and more efficient and compact form of development that disturbs less open space and natural materials and conforms to existing topography and natural features better than a conventional subdivision;
- d. Whether the OSRD reduces the total amount of disturbance on the site as compared to a conventional subdivision;
- e. Whether the OSRD furthers the goals and policies of the Town of Rockport Community Development Plan, Town of Rockport Watershed Protection Plan and Town of Rockport Open Space and Recreation Plan as amended from time to time;
- f. Whether the OSRD facilitates the construction and maintenance of housing, streets, utilities, and public services in a more economical and efficient manner than a conventional subdivision plan;
- g. Whether the OSRD Special Permit Plan and other supporting documentation complies with all provisions of this Section;
- h. Whether the Proposed construction of housing, landscape and streetscape is in harmony with the architectural heritage and historic character of the Town of Rockport; and
- i. Whether the OSRD promotes affordable housing and a more diversified housing stock.

## **L. INCREASES IN PERMISSIBLE DENSITY**

- 1. The Planning Board at its discretion may award a density bonus for an OSRD to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the OSRD shall not, in the aggregate, exceed twenty percent (20%) of the Basic Maximum Number. Computations shall be rounded down. Such a density bonus may be awarded in the following circumstances and only if the Planning Board determines that the proposed development is in substantial conformance with the purposes and intents of this by-law:
  - a. For every one dwelling unit restricted to occupancy for a period of not less than ninety-nine years by persons or families who qualify as low or moderate income, as those terms are defined for the area by the Commonwealth's Department of Housing and Community Development, the Planning Board may award a one dwelling unit density bonus; provided, however, that this density bonus, in aggregate with other density bonuses, shall not exceed twenty percent (20%) of the Basic Maximum Number.



- b. For each set aside of an increased twenty percent (20%) of open space over the minimum fifty percent (50%) open space set aside, the Planning Board may award a bonus of ten percent (10%) of the Basic Maximum Number.

**M. ADOPTION OF RULES AND REGULATIONS**

The Planning Board may after notice and hearing adopt rules and regulations to implement the provisions of this Section, including but not limited to specifying the content and number of required plans, application procedures, filing and review fees, design criteria, development standards, and other general requirements consistent with this Section. (added Special Fall Town Meeting, September 12, 2005)

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## ~~XIII.~~XII. REMOVAL AND FILLING-IN

### A. PURPOSE AND COMPLIANCE

Before granting a ~~special permit~~Special Permit for land removal or filling, the Planning Board must find all of the following purposes and criteria are met:

1. Minimize Negative Impact on the Area. The proposed use protects adjoining premises against seriously detrimental uses. If applicable, this shall include provision for surface water drainage, sound and sight buffers and preservation of views, light, and air; ~~and~~
2. Protect the Public Safety. The proposed use will promote the convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, and minimize traffic impacts on the streets and roads in the area. If applicable, this shall include considering the location of driveway openings in relation to traffic and adjacent streets, access by emergency vehicles, the arrangement of parking and loading spaces, and provisions for persons with disabilities; ~~and~~
3. Protect the Natural Landscape. The proposed use will promote a harmonious relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area; ~~and~~
4. Protect the Town's Resources. The proposed use will not overload, and will mitigate adverse-impacts on, the Town's resources including the effect on the Town's water supply and distribution system, sanitary and storm sewage collection and treatment systems, fire protection, streets and schools; and,
- ~~4.~~5. Be Harmonious with Area. The use will not unduly impair the integrity of character of the immediate area or adjoining areas, nor be detrimental to the health or general welfare.

### B. ADMINISTRATION

Special Permits with Site Plan for land removal and filling authorized by the Planning Board shall be granted for the purposes of this section only after application to the Rockport Planning Board for a Site Plan Special Permit, and a hearing by the Planning Board and shall be subject to the provisions of this ~~By-law~~By-law.

Application for a Special Permit with Site Plan shall be made to the Planning Board on forms provided for that purpose, accompanied by the required fee. A Special Permit with Site Plan is required for removal of more than 300 cubic yards of earth material and filling of more than 300 cubic yards of clean fill. Regulations governing the application and fee shall be adopted by Planning Board.

Special Permits with Site Plan shall only be issued following public hearings held within

~~sixty-five (65)~~ days after filing of a completed application. The hearing for a Special Permit with Site Plan for Land Removal or Filling may be heard at the same time as and under the same public notice requirements of a site plan.

After a public hearing held in compliance with MGL ~~c.Chapter~~ 40A, ~~s.Section~~ 11, the Planning Board shall set regulations for the Removal of Earth Materials that define required setbacks for activities from abutting property lines, and the maximum period for which the permit will be in effect. Permits may be revoked by the Planning Board for non-compliance with the permit requirements.

### C. ~~DEFINITIONS~~ CLEAN FILL

~~The Definitions included in Section 8.D. of the General By-law (Stormwater Management By-law) shall also apply to this section. In addition, the following definitions are added:-~~

~~Clean Fill:~~ Clean fill contains no garbage, refuse, rubbish, industrial or commercial or municipal fill or waste, demolition debris, septic sludge, lumber, wood, stumps, roots (greater than 4" in diameter), plaster, wire, pipes, laths, paper, cardboard, glass, metal, tires, ashes, asphalt, concrete, appliances, motor vehicles or parts of any of the foregoing. No fill containing levels of oil or hazardous materials above GW-1/S-1 Method 1 Standards, as described in the Massachusetts Contingency Plan (MCP) environmental regulations as revised, will be allowed.

### D. REMOVAL OF EARTH MATERIALS

#### ~~1.~~ Special Permit with Site Plan Required.

1. All removal of topsoil, sod, loam, humus, clay, sand, gravel, quarry, loam, sod, turf, ledge, stone or other earth materials, other than that which is incidental to and in connection with the construction of a building for which a permit has been issued in accordance with the Rockport Zoning ~~By-law~~ By-law and the Rockport General ~~By-law~~ By-law, that is intended to either disturb 10,000 square feet or more of land surface, or intended to remove 300 cubic yards or more of material as listed above from its undisturbed location, or intends to remove and process and treat raw materials, is required to apply for a Special Permit with Site Plan.

#### 2. Projects Exempt from Special Permit with Site Plan for Removal of Earth Materials

- a. Any existing sand or gravel removal activity operating under a permit issued prior to the date of adoption of this ~~By-law~~ By-law may continue until the expiration of the permit, except that any expansion or change in operation not covered by such permit shall require conformance with the above regulations.
- b. Any project that does not exceed the threshold in Section D.1 above.
- c. The removal of less than three hundred (300) cubic yards of material in the aggregate at any point over a three year span from any one lot.

- d. The transfer of less than 100 cubic yards of material from one part of a lot to another part of the same lot within 300 feet of the source of the material.
- e. The removal of material necessarily excavated in connection with a permitted or otherwise officially approved construction of a building, structure, street or driveway of less than 10,000 sf in area, sidewalk, path or other appurtenance provided the quantity of material removed does not exceed that actually displaced by the portion of such building, structure, street, driveway, sidewalk, path or other appurtenances below finished grade.
- f. When such removal or placement is in accordance with the terms of an Order of Conditions or Determination of Applicability issued by the Conservation Commission pursuant to MGL c.131, s.40, ~~M.G.L. Ch. 131, s.40.~~
- g. When placement is for landscaping, agricultural, or gardening purposes and the material to be placed consists of peat moss, tree bark, wood chips, or other vegetative mulch, loam, or crushed stone or gravel in a walkway, driveway, garden, or parking area.

### 3. **Restrictions to be Incorporated into the Special Permit**

- ~~g.~~a. No excavation, quarry, bank or work face in an area of unstable material extending under original ground level shall create a slope of more than one vertical to two horizontal. Quarries in stable solid rock may have a slope of a steeper grade. The Special Permit with Site Plan may require the installation of a fence if the location and slope pose a danger to public safety.
- ~~h.~~b. Removal operation must comply with section 8.D. of the General ~~By-law~~ By-law
- ~~i.~~c. —Stormwater Management ~~By-law~~ By-law. Adequate provision for drainage must be made both during and after the completion of operations.
- ~~j.~~d. All operations shall be conducted in such a manner so as to comply with the laws of the Commonwealth of Massachusetts regulating water pollution and air pollution.
- e. Hours of operation shall be designated by the Planning Board in issuing the Site Plan Special Permit.

### ~~2.~~ **Required information for the Site Plan to be submitted.**

~~3.~~

- ~~4.~~ In addition to other requirements for Site Plan Review in Section ~~IX~~ III of the Rockport Zoning ~~By-law~~ By-law, the following provisions are required for the removal areas. The required plans and application information shall be prepared by a registered professional engineer or a registered land surveyor, with the following additional information:

- a. The location and description of water supply, wells, and sanitary sewerage systems and temporary and permanent drainage systems for the site and within 100 ~~feet~~<sup>2</sup> of the site.
- b. Topographic mapping showing existing contours at intervals of not more than two ~~(2)~~ feet and contours of finished grade after the conclusion of the operation. The mapping shall also show the grades below which no excavation shall take place.
- c. The site plan must include the areas where at least four ~~(4)~~ inches of topsoil will be applied over all excavated, filled, or otherwise disturbed surfaces and seeding with a perennial cover crop, reseeded as necessary to assure uniform growth and soil surface stabilization.
- d. Submission of plan for lighting if night operation or security lighting is contemplated.
- e. The relocations of existing and future buildings and operations machinery to the removal areas.
- f. Delineation of the existing removal areas and the proposed area for removal in the immediate future.
- g. Locations of any proposed substantial fence enclosing the excavation or quarry where it is deemed to be necessary for public safety.

~~4.~~ **Required Restoration.**

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5. Forthwith, following expiration or revocation of a permit, or upon voluntary cessation of operations:

- a. All land shall be graded, leaving no slopes in excess of one foot vertical to two ~~(2)~~ feet horizontal. surface drainage shall be provided for. The applicant shall bury or dispose of boulders and stumps; and shall cover the area with not less than four ~~(4)~~ inches of topsoil, with the exception of exposed ledge rock; and shall seed the area with cover vegetation of a perennial cover crop, which shall be established prior to release of the bond.
- b. Stockpiling. Topsoil stripped and stockpiled in preparation for construction or for earth removal shall be restored to its original distribution within ~~eighteen (18)~~ months of such stripping unless a valid building permit or earth removal permit is in force.
- c. Restoration will be complied with within six ~~(6)~~ months of expiration of the building permit or issuance of a Certificate of Occupancy, or within one year of issuance of a ~~special permit~~ Special Permit.
- d. The Bond shall not be released until sufficient time has elapsed for the Planning Board or its agent to ascertain that the vegetation planted has successfully been established and that drainage is satisfactory.

~~6.~~ **Performance Guarantee.**

~~7.~~

6. The Planning Board shall require a surety bond signed by a Surety Company authorized to do business in the Commonwealth of Massachusetts, or other acceptable performance security, in an amount approved by the Board as sufficient to guarantee conformity with the provisions of the permit issued hereunder.

a. The Planning Board may require the Permittee to post, before the start of land removal, a surety bond, irrevocable letter of credit, cash, or other acceptable security as performance guarantee, to be in an amount deemed sufficient by the Planning Board to ensure that the work will be completed in accordance with the permit. If the project is phased, the Permit Authority may release part of the bond as each phase is completed in compliance with the permit but the bond may not be fully released until the Planning Board has received the Final Report as required by this ~~by-law~~ By-law and has issued a Certificate of Completion.

b. The Land Removal and Filling-In Rules and Regulations prepared by the Planning Board and implemented after a public hearing consistent ~~with-~~ MGL c.40A, s.11 ~~Chapter 40A, Section 11~~ shall establish reasonable criteria for assessing the Performance Guarantee.

~~8.~~ Renewal of Permit.

~~9.~~

~~10.~~ 7. For a continuation of an operation beyond a period designated in the initial permit, a new application must be granted in the same manner as for the initial permit except that the Planning Board may waive requirements for submittal of materials required by this section. The waiver must be granted in writing by the Board to the applicant. All other provisions relating to operational standards and permit procedures shall apply.

## ~~D.~~ E. FILLING-IN OF LAND

For the filling-in of any land area which is not exempted in Section 2 below, no such filling-in of land shall proceed without first securing a Special Permit with Site Plan, according to the regulations adopted by the Planning Board in accordance with Section B. of this ~~By-law~~ By-law, and procedures set forth in this ~~By-law~~ By-law, subject to the provisions contained herein.

A Special Permit with Site Plan for filling-in shall be issued only for clean fill as defined in Section C. No other fill materials will be permitted in fill in the Town of Rockport.

### 1. Threshold for Projects Requiring a Permit

- a. A filling-in operation which exceeds a total of ~~three hundred (300)~~ cubic yards of material.
- b. A filling-in operation which exceeds a total area of ~~ten thousand (10,000)~~ square feet on any lot, land parcel or subdivision thereof.

- c. Any filling on private ways within the Town of Rockport which exceeds a total of 100 cubic yards of material or which exceeds a total area of ~~one thousand~~ (1,000) square feet of area of the way.

**2. Projects Exempt from Special Permit with Site Plan.**

2. The filling-in of any land area shall be exempt from this Section provided any of the following conditions are fully complied with:

- a. A filling-in operation which is associated with acceptable agricultural land management practices, including, but not limited to, plowing and construction of agricultural structures; nursery operations, such as the removal and/or transplanting of cultivated sod, shrubs, and trees; logging operations; filling with leaves, manure, and composted material.

- ~~b. Filling-in operations associated with refuse disposal and sanitary landfill facilities operated by the Town of Rockport and operated in accordance with all appropriate State and local regulations.~~

- e.b. Filling-in operations necessary in connection with permitted or approved construction of a building, structure, street, driveway, sidewalk, path or other appurtenance that has already received review and approval as subdivision, site plan, or ~~special permit~~ Special Permit under the Rockport Zoning ~~By-law~~ By-laws or Subdivision Regulations.

- c. Filling-in as a maintenance measure, or for landscaping purposes on existing developed lots or parcels, provided that the aggregate of areas affected does not exceed ~~ten thousand~~ (10,000) square feet, the constructed grade change does not exceed ~~twelve~~ (12) inches at any point and does not alter the drainage patterns, and the filling-in does not involve a quantity of material in excess of ~~three hundred~~ (300) cubic yards.

**3. New Permit Required on Expiration.**

3. For a continuation of an operation beyond a period designated in the initial permit, a new application must be made and a new Special Permit must be granted in the same manner as for the initial permit except that the Planning Board may waive requirements for submittal of documents required by this section. All other provisions relating to operational standards and permit procedures shall apply to the extension also. A separate permit shall be required for each separate non-contiguous site and for any expansion on the same site.

**4. Required Site Plan.**

4. A site plan shall be filed with the Planning Board for any land which is to be filled and is not exempted under the provisions of this section of the Rockport Zoning By-law. Site plans for fill areas shall be prepared by a registered professional engineer or a registered land surveyor in accordance with this section and Section ~~IX-XIII~~ of the Rockport Zoning ~~By-law~~ By-law. In addition to the requirements of Section ~~IX-XIII~~ of the Rockport Zoning ~~By-law~~ By-law, site plans must include the following for the site to be filled and the area within ~~one hundred~~ (100) feet of the site to be filled:



- a. The premises and surrounding area within ~~one hundred (100)~~ feet showing the area to be filled in, property lines within which the filling is proposed, existing and proposed contour lines at intervals of not more than two ~~(2)~~ feet resulting from the proposed filling-in, in relation to the topography of the premises.
- b. The location of any buildings, structures, utilities, sewers, wells, water and storm drains within ~~one hundred (100)~~ feet of the site.
- c. A certification of the quantity and type of fill involved by submission of the Applicant, and a description of the fill to be provided. Only clean fill may be used for fill.
- d. Detailed plans of all temporary and permanent drainage provisions, retaining walls, cribbing, vegetative practices, erosion and sedimentation control measures and all other protective measures and devices utilized or constructed in connection with the area to be filled.
- e. A schedule and sequence indicating the anticipated starting and completion dates.
- f. A plan for lighting if night operation is contemplated or for nighttime security.
- g. Other plans, drawings or materials as may be required by the Planning Board or by Section ~~IX~~ XIII of the ~~Rockport Z~~ zoning ~~b~~ By-law, and plans adequate to show compliance with all of the conditions described in Section 5 below.
- h. A plan showing how the restoration of the filled area will be completed to meet the requirements of this ~~By-law~~ By-law.

~~5.~~ **Conditions for the Filling-In.**

5. For any operation subject to the provision of Section E.1 of this ~~b~~ By-law, the following conditions shall govern:

- a. Provision shall be made for adequate temporary and permanent drainage of the site consistent with the requirements of the Stormwater Management By- law or a Stormwater Permit.
- b. Fills shall be limited to terrace fills which are not to exceed ~~ten (10)~~ feet at any one time nor be within ~~ten (10)~~ feet of an adjacent property line or cut.
- c. Re-grading of all or parts of the slopes resulting from such fill shall be carried out.
- d. At least four ~~(4)~~ inches of topsoil shall be replaced over all filled or otherwise disturbed surfaces, seeded or sodded with a perennial cover crop, and re-seeded or re-sodded as necessary to assure uniform growth and soil surface stabilization.
- e. The Planning Board may require temporary fencing six ~~(6)~~ feet in height

with suitable gates protecting the filled area if it is needed for public safety. This may be needed where any fill will have a depth of ~~ten~~(10) feet or more and create a slope of more than one vertical to two horizontal. Such fence shall be located ~~ten~~(10) feet or more from the edge of the fill.

- f. Documentation shall be submitted by the Applicant as to the effect of such filling-in activities on drainage, both within the immediate area and sufficiently far downstream to encompass all the area potentially impacted, at the sole discretion of the Planning Board.
- g. No final slopes shall exceed a slope of more than one ~~(1)~~ foot vertical to two ~~(2)~~ feet horizontal.
- h. No filling-in of land shall cause or permit any earth material or water or liquid to be deposited upon or to roll or flow over the premises of another without the written consent of the owner of such premises so affected; nor shall any filling-in of land cause or permit any earth material or water or liquid to be deposited, or to roll, flow, or wash upon or over any public street, street improvement, road, sewer, storm drain, water course, or right-of-way, or public property.
- i. Such other conditions as may be deemed necessary and reasonable shall be imposed by the Planning Board in order to prevent damage to public or private property or any sewer, storm drain, or watercourse, or to prevent the filling-in of land from being conducted in a manner hazardous to life or property, or in a manner likely to create a nuisance.

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**~~XIV.~~XIII. SITE PLAN REVIEW** ~~(Replaced with current text ATM 4-27-2019)~~

**A. PURPOSE.**

Site Plan Review is a means of protecting the public interest through the evaluation of potential impacts of new development and redevelopment of land and structures within the Town of Rockport. Site Plan Review minimizes impacts that are otherwise permitted through the imposition of reasonable conditions.

**~~B. DEFINITIONS.~~**

**~~C.~~**

**~~D.A. Applicant~~** ~~an “Applicant” may be a natural person, a corporation, a limited liability company, a partnership, or any other entity capable of holding title to real property.~~

**~~E.A. Site Plan Application~~** ~~The “Site Plan Application” consists of the maps, drawings, and all other written materials submitted by the Applicant in furtherance of obtaining Site Plan approval.~~

**~~F.A. Project~~** ~~The “Project” is the construction of structures or buildings, the alteration or enlargement of existing structures or buildings, or the alteration of the ground for which an Applicant seeks approval of the Site Plan Application.~~

**~~G.~~**

**~~H.B.~~ SITE PLAN REVIEW CLASSIFICATION.**

**1. Minor Construction Project.** The following are classified as a Minor Construction Projects:

- a. The construction or exterior expansion of a single-family or two-family dwelling and any accessory or appurtenant building when the gross floor area of the buildings either separately or combined is 6,000 square feet or more.
- b. The construction of a parking lot with six or more parking spaces or the expansion of an existing parking lot which expansion increases the number of parking spaces to six or more.
- c. The construction or addition of a raised loading dock on an existing building.
- d. The construction or addition of a drive-thru onto an existing building.
- e. Land removal or land filling subject to Section XII of the Zoning ~~Bylaw~~By-law. In the SRAA zoning district, site plan review is required if land removal or land filling disturbs 20,000 square feet or more.

- f. The installation of large-scale ground mounted solar photovoltaic systems under Section IX.

**2. Major Construction Project.** The following are classified as a Major Construction Project:

- ~~g~~a. The construction of a multifamily dwelling;
- ~~h~~b. The construction of an Educational, Institutional, or Recreational building as listed in section III, B of the Table of Schedule of Uses in the Zoning ~~Bylaw~~By-laws. Buildings used solely for agricultural purposes are exempt from Site Plan Review;
- ~~i~~c. The construction of a building for Retail Business and Commercial Service Uses as listed in ~~section~~Section III, B of the Table of Permitted Uses;
- ~~j~~d. The construction of a building for Commercial or Industrial Uses as listed in ~~section~~Section III, B of the Table of Permitted Uses;
- ~~k~~e. Any Minor Construction Project that the Planning Board, in its discretion, determines should be classified as a Major Construction Project.
- ~~l~~f. The expansion within a five-year period of an existing building, which would have been classified originally as a Major Construction Project, by 1,500 square feet of gross floor area or a 30 percent increase in the gross floor area, whichever amount is less.

**3. Review Criteria for Minor and Major Construction Projects.** Construction and site alterations subject to Site Plan review shall be considered in the context of the location, the proposed use, and when new construction or redevelopment of structures is involved, the design of the building. As is reasonably practicable, a proposed Site Plan shall achieve the following objectives:

- ~~m~~a. Minimize the following:
- the disturbance to the natural and existing landscape;
  - the removal of trees of over 24" circumference at breast height;
  - the length of removed stone walls, and
  - the volume of stormwater flow from the site, soil erosion, and the threat of air or water pollution;
- ~~n~~b. Maximize pedestrian, bicycle, and vehicular access and safety both on site and when entering and leaving the site;
- ~~o~~c. Minimize the obstruction of scenic views from public locations;
- ~~p~~d. Minimize the visibility of parking, storage, or other outdoor service areas that could be viewed from public areas or developed residential properties;

- ~~e.~~ Require that outdoor lighting comply with the Town's outdoor lighting ~~bylaw~~ By-law and minimize the glare from the headlights of vehicles;
- ~~f.~~ Require the use of architectural features, materials and scale so that proposed structures are in harmony with existing buildings in the immediate vicinity;
- ~~g.~~ Require the use of landscaping and other outdoor features that will enhance the visual quality of the site;
- ~~h.~~ Minimize to the extent practicable adverse environmental impacts to adjacent properties by limiting hours of operation, noise, odor, dust and vibration, and by requiring appropriate design and materials for containment, ventilation, screening, sound proofing, and sound dampening;
- ~~i.~~ Provide stormwater management and plans for the construction of roads and driveways which are consistent with the Town's Subdivision Regulations, State and Federal law, and the requirements of the Department of Public Works;
- ~~j.~~ Provide adequate access to the site structures for fire and public safety equipment;
- k. Provide adequate utility and wastewater disposal services.

#### I.C. **SITE PLAN REVIEW FOR RELIGIOUS OR NONPROFIT EDUCATIONAL INSTITUTIONS.**

Pursuant to MGL c.40A, s.3. ~~Section 3, Chapter 40A of Title VII of the Massachusetts General Laws,~~ Site Plan Review of lands owned by a religious sect or denomination or by a nonprofit education corporation is limited to the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

#### I.D. **REQUIRED SUBMISSIONS**

1. **Minor Construction Projects.** At least seven (~~7~~) days prior to a regularly scheduled Planning Board meeting, an Applicant shall file with the Planning Board Secretary an Application and four copies of the site plan at a scale appropriate on a 24" x 36" sheet and 13 copies of the same site plan in an 11" x 17" format. The planning board secretary shall distribute a copy of the application and four of the 24" x 36" plans, or, alternatively, distribute a single copy of each document electronically in PDF format, to each of the Department of Public Works, the Building Inspector, Town Clerk, and the Planning Board office file. The Planning Board secretary shall distribute the remaining 11" x 17" copies as follows: one each to the Board of Selectmen, one each to the Board of Appeals, one to the Conservation Commission, one to the Board of Health, one to the Historic Preservation Commission, one to the Chief of Police, one to the Fire Chief, and five to the Planning Board members, ~~and one to the Town Planner.~~ Alternatively, the Planning Board





b. **Architectural Drawings.** An Applicant shall submit scaled elevation drawings for a minor construction Project that show the following:

~~vii.i~~ Details of major architectural elements;

~~viii.ii~~ Specification of materials to be used;

iii. Dimensions of the building or addition, including the location of exterior mechanical equipment.

~~b.~~ **Major Construction Site Project Plan Requirements.**

c. The Major Construction Project Site Plan Checklist submission requirements are contained in the Rules and Regulations of the Planning Board.

d. **Minor Construction Project Review Procedure.** The Planning Board shall review Project submissions for the sufficiency of the documentation, and, if required, refer the Project to the Zoning Board of Appeals, the Historic District Commission, the Conservation Commission, or any other board or commission that would have jurisdiction over the Project. On a Minor Construction Project, the Planning Board shall hold a public hearing within 60 days from the filing date of the application or within 45 days after a Project referred to another board or commission has been returned to the Planning Board by that board or commission. The Planning Board shall decide the Site Plan Application within 30 days of the close of the public hearing.

e. **Major Construction Project Review Procedure.** The Planning Board shall review the Site Plans submitted against the Plans and Submittal Checklist to determine the sufficiency of the documentation and, if required, refer the Project to the Zoning Board of Appeals, the Historic District Commission, the Conservation Commission, or any other board or commission that would have jurisdiction over the Project. On a Major Construction Project, the Planning Board shall hold a public hearing within 60 days from the filing date of the application or within 45 days after a Project referred to another board or commission has been returned to the Planning Board by that board or commission. The Planning Board shall decide the Site Plan Application within 30 days of the close of the public hearing.

f. **Waiver of Site Plan Requirements.** Upon written request of an Applicant, the Planning Board may waive any plan content requirement ~~of subsection 5 above~~ or any requirement of the Plans and Submittal Checklist in the Rules and Regulations of the Planning Board. The Applicant shall have the burden of demonstrating to the Planning Board that a requirement for which a waiver is sought is either burdensome or unnecessary for an adequate review of the Project. The Planning Board's waiver of any requirement shall be made by resolution of the Board

adopted prior to the close of the public hearing, and the Planning Board shall set forth in the resolution the reason the waiver is granted.

~~e.g.~~

~~d.h.~~ **Withdrawal of Waiver.** If during the approval process the Planning Board discovers new information that would have caused the Board to refuse to grant a waiver already granted, the Planning Board may rescind the previously granted waiver.

5. **Consultants.** In its discretion, the Planning Board may determine that the Planning Board requires the advice of outside consultants in connection with the Board's review of a Site Plan. Upon such determination, the Planning Board shall inform the Applicant of the funds that the Applicant shall be required to deposit in an escrow account with the Town to cover the Board's anticipated professional fees. To continue the review process, the Applicant shall deposit with the Town the funds requested by the Planning Board for its consultant review. If the escrow becomes insufficient to reimburse the Planning Board for its consultant fees, the Applicant may be required by the Planning Board to deposit additional funds with the Town. All escrowed fees shall be deposited prior to the Planning Board's issuance of an approval to a Site Plan Application. Surplus funds deposited by the Applicant shall be refunded to the Applicant within 30 days of a final determination on the Site Plan Application. An applicant shall have a right of appeal to the Board of Selectmen from the Planning Board's selection of an outside consultant under this section as described in Mass. Gen. Law Chapter 44, section 53G.

6. **Public Hearing.** The Planning Board shall schedule a public hearing within with the time periods set forth in 6(e) or (f) above after receipt of the Application and applicable filing fee. The Planning Board shall prepare the notice of the public hearing, and the applicant shall be responsible for providing notice as set forth in this section and shall pay the costs of publication and mailing. Notice shall be given as follows:

- a. Notice of the public hearing shall be published in a newspaper of general circulation in the Town of Rockport, once in each of two successive weeks. The first publication of the notice shall be not less than 14 days before the hearing and second publication of the notice shall be not less than 5 days before the hearing.
- b. A notice of the public hearing shall also be posted in the town hall by a date not less than 14 days before the public hearing.
- c. Notice of the public hearing shall be mailed by first class mail at least 14 days before the public hearing date to property owners who are abutters to the Project parcel(s), who are owners of land directly opposite on any public or private street or way, or who are abutters to the abutters and within 300 feet of a property line of the Project parcel(s) as those owners appear in the most recent applicable tax list. Notice shall also be mailed to the planning board of every abutting city or town.

- d. Prior to the public hearing, the Applicant shall file with the Planning Board Secretary a statement from the Town Assessor's Office certifying to the Planning Board the names and addresses of the property owners whom the Applicant was to notify of the public hearing and shall provide to the Secretary certified mailing receipts with return receipts requested showing that the notice of the public hearing was mailed. The sheet with names and addresses of property owners must have all return receipts returned before submitting to Planning Board.

## 7. **Decision**

- a. The Planning Board shall issue a decision on a Site Plan Application within 30 days of the close of the public hearing. The Planning Board's decision shall be in writing. The decision shall take one of the following actions:

- i. Approve the Site Plan Application without conditions;
- ii. Approve the Site Plan Application with the Planning Board imposing conditions reasonably related to achieving the objectives of the Review Criteria set forth in subsection 3(c) above;
- iii. Deny the Site Plan Application because the Project did not meet the objectives of the Review Criteria set forth in subsection 3(c) above; <sup>7.1</sup> or <sub>1</sub>
- iv. Deny the Site Plan Application because the Applicant has not provided information or documentation required for the Planning Board to rule on the Application and the Planning Board determines that the Application remains incomplete.

- b. Decisions on Site Plan Applications for Religious or Nonprofit Educational Uses.

- i. The Planning Board may impose reasonable conditions as provided in section 4 above on a Site Plan Application for a Religious or Nonprofit Educational Facility, but it shall not deny such Site Plan Application.

- c. Approval of a Site Plan Review application or any extension, modification or renewal thereof shall not take effect until a copy of the decision bearing the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time. Proof of recording with the Essex Registry of Deeds shall be presented to the Building Inspector prior to the commencement of work.

## ~~6.~~ **Duration.**

- ~~7.8.~~ Site Plan approval shall expire two years after it is granted if construction of

the Project is not commenced within that period. Upon application made prior to the expiration of the two years, the Planning Board may extend the Site Plan approval for an additional 90 days.

~~8.~~ **Regulations.**

9. The Planning Board may adopt and from time to time may amend rules and regulations for the administration of Site Plan Review.

~~10.~~ **Fees.**

- ~~11.~~ 10. Board fees associated with the Site Plan approval process are to be set by resolution of the Board.

~~12.~~ **Enforcement by the Building Inspector.**

~~13.~~

- ~~14.~~ 11. Prior to the issuance of a Certificate of Occupancy, the Building Inspector shall determine that the Project has been constructed in accordance with the approved Site Plan and any conditions imposed by the Planning Board.

~~15.~~ **Appeal.**

- ~~16.~~ 12. Decisions of the Planning Board regarding site plan approval shall be appealed as set forth in G.L.MGL c. Chapter 40A, s. Section 17 to a court of competent jurisdiction.

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## ~~XV.~~XIV. ADMINISTRATION

### A. ENFORCEMENT

The provisions of this Zoning ~~By-~~law shall be enforced by the ~~Inspector of Buildings~~Building Inspector, also known as the Building Inspector.

Any person may file a written request to the Building Inspector for enforcement of this ~~By-law~~By-law with reference to an alleged violation, as provided in MGL c.40A, s7-~~G.L. c. 40A, § 7~~. Within ~~fourteen~~(14) days of receipt of the request, the Building Inspector shall investigate the facts and inspect the alleged violation and, if the Building Inspector finds evidence of a violation, the Building Inspector shall give written notice to the owner and occupant of said premises and demand that such violation be abated within such time as the Building Inspector deems reasonable. The notice and demand may be given by mail, addressed to the owner at the address as it then appears on the records of the Board of Assessors, and to the occupant at the address of the premises.

If after notice and demand the violation has not been abated within the time set by the Building Inspector, the Building Inspector shall institute appropriate action or proceedings in the name of the Town of Rockport to prevent, correct, restrain, or abate such violation.

If the Building Inspector determines that there is no violation, the Building Inspector shall give written notice of the decision to the complaining person within 14 days after the receipt of such request.

#### Appeal.

1. An appeal to the Board of Appeals may be taken by any person aggrieved due to inability to obtain a permit or enforcement action from the Building Inspector, as provided in MGL c.40A, s.8, as amended.

#### Penalty.

2. If the notice of violation is not complied with according to the time specified in the notice, the Building Inspector may, in accordance with MGL c.40, s.21D-~~G.L. c. 40, § 21D~~, institute a non-criminal complaint(s) with penalty. Each day in which a violation exists shall be deemed a separate offense. The penalty for violation of any provision of this ~~By-law~~By-law shall be \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense; and \$200.00 for the fourth and each subsequent offense.

The Building Inspector may, with the approval of the Board of Selectmen, institute the appropriate criminal action or proceeding at law or in equity to prevent any unlawful action, use or condition, and to restrain, correct or abate such violation. Penalties for violations may, upon conviction, be affixed in an amount not to exceed three-hundred dollars (\$300.00) for each offense. Each day, or portion of a day, in which a violation exists shall be deemed a separate

offense.

## **B. BUILDING PERMITS, SPECIAL PERMITS, VARIANCES**

The ~~Inspector of Buildings~~ Building Inspector shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of any provisions of the Zoning ~~Bylaw~~ By-law; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of any provision of this Zoning ~~Bylaw~~ By-law.

Construction or operations under a building permit or ~~special permit~~ Special Permit shall conform to any subsequent amendment of this Zoning ~~Bylaw~~ By-law unless the use or construction is commenced within six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable. Permits will not be granted for the construction or alteration of any structure that will cause a change in existing grades and contours which interfere with drainage of water from the public highways unless provision is made at the owner's expense for the proper disposal of such water by gutters, ditches, pipes or other necessary drainage structures. The owner will grant to the Town all drainage easements which are necessary to establish and preserve the changed drainage system or facilities.

All ~~special permit~~ Special Permits, variances, and other relief granted by the Planning Board and Board of Appeals are conditioned upon compliance with the conditions set forth in such permits and other forms of relief and the State Building Code.

## **C. BOARD OF APPEALS**

- 1. Establishment.** The Selectmen shall appoint a Board of Appeals of five members, as provided by law. Appointments shall be for the term of five years. The terms shall be staggered so that the term of one appointee will expire each year.

Vacancies shall be filled by the Selectmen by appointment for the balance of the term in which the vacancy occurs. Associate members, to fill vacancies caused by absence, inability to act or interest on the part of a member, shall be appointed by the Selectmen annually for a term of one year.

- 2. Rules and Regulations.** The Board of Appeals shall adopt and from time to time amend rules relative to the issuance of permits. The Board of Appeals shall file a copy of said rules in the office of the Town Clerk.
- 3. Powers.** The Board of Appeals shall, in addition to all other powers given to it by law, have the power to hear and decide appeals, to hear and decide applications for ~~special permit~~ Special Permits as applicable, and to hear and decide petitions for variances.

4. **Procedures.** No permit, appeal or variance shall be granted by the Board of Appeals except after a public hearing, as required by law. Notice and the publication and giving of notice for such public hearing and the procedural requirements for such public hearings shall be those set forth in MGL c40A, as amended, which is incorporated herein by reference. The Board of Appeals may impose appropriate conditions and safeguards in all its decisions and may impose limitations both of time and of use. A continuation of a use permitted by a ~~special permit~~ Special Permit or variance may be conditional upon compliance with the terms, conditions and safeguards set forth in such ~~special permit~~ Special Permit or variance.
5. **Variances.** This Zoning By-law specifically permits the Board of Appeals to grant variances for use in any district.

#### D. SPECIAL PERMITS

##### 1. ~~PENALTY SPECIAL PERMITS~~ C.

Special Permits shall only be issued following public hearings held within the period, established by Law, after the filing of an application with the Zoning Board of Appeals or Planning Board, as applicable.

Special Permits shall lapse within three years, and including such time required to pursue or await the determination of an appeal referred to in MGL c.40A, s.17 ~~General Laws, Chapter 40A, §17~~ as amended, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in case of a permit for construction, if construction has not begun by such date except for good cause.

- 2.1. **Guidelines.** In addition to any other guidelines or standards established herein, unless otherwise provided by law, the Planning Board shall, before granting a ~~special permit~~ Special Permit, find that, in its judgment, all of the following conditions are satisfied:

- a. The specific site is an appropriate location for such use, structure or condition.
- b. The use or action will not be detrimental to the neighborhood, and, without limiting the foregoing, because of noise, odors, vibration or unsightliness.
- c. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- d. The proposed use, structure or condition is in harmony with the general purpose and intent of this Zoning ~~By Law~~ By-law.

~~Whoever violates any provision of this by-law shall be punished by a fine not exceeding \$300.00 for each violation. Each day that such violations continue shall~~



~~constitute a separate offense.~~

#### **~~D.~~E. INVALIDITY**

The invalidity of any section or provision of this ~~bylaw~~By-law shall not invalidate any other section or division thereof.

#### **~~E.~~F. EFFECTIVE DATE**

This ~~bylaw~~By-law shall take effect as provided by law.

#### **~~F.~~G. AMENDMENTS**

1. This ~~Bylaw~~By-law may be amended at any Annual or Special Town Meeting.
2. This ~~Bylaw~~By-law shall supersede all previous ~~bylaw~~By-laws.

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